

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

NOKIA CORPORATION and NOKIA, INC.,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 06-509 (JJF)
)	
QUALCOMM INCORPORATED,)	
)	
Defendant.)	

**PLAINTIFFS NOKIA CORPORATION AND NOKIA INC.'S
MEMORANDUM IN OPPOSITION TO QUALCOMM INCORPORATED'S
MOTION TO CONSOLIDATE BRIEFING AND HEARING SCHEDULES**

Plaintiffs Nokia Corporation and Nokia Inc. (together, "Nokia") hereby respond as follows to Qualcomm Incorporated's ("Qualcomm") Motion to Consolidate Briefing and Hearing Schedules (the "Motion to Consolidate"):

INTRODUCTION

Qualcomm is trying to put the cart before the horse. It asks the Court to decide whether this case should be transferred to San Diego before there has been any decision on whether there is federal subject matter jurisdiction. Moreover, Qualcomm cannot demonstrate any rush to have the case transferred to San Diego. Only one week ago, Qualcomm itself represented to Vice Chancellor Strine that expedited treatment of such a motion was not necessary in light of the procedural posture of the parties' other litigation. Indeed, if the case is transferred, it will be consolidated with another action that is stayed indefinitely. Thus, Qualcomm's Motion to Consolidate, and the underlying Motion to Transfer, would serve only to delay any ruling on the

merits of Nokia's claims.¹ The Court should deny Qualcomm's Motion to Consolidate and determine first whether remand to the Chancery Court is appropriate.

PROCEDURAL BACKGROUND

On August 8, 2006, Nokia commenced the present action in the Delaware Court of Chancery and contemporaneously moved the Court to expedite the proceedings. The Motion to Expedite sought a prompt trial date in early 2007 on the ground that Qualcomm's actions threatened Nokia with irreparable harm. Qualcomm responded on August 10, raising objections to venue and jurisdiction but arguing that "there is no need for expedition here[.]" Ex. A at 3.

Vice Chancellor Strine held a scheduling conference on August 11. The Vice Chancellor addressed Qualcomm's venue and jurisdiction objections, and asked Qualcomm to commit to a filing date for its motion to dismiss based on those objections. Ex. B at 6-7. Qualcomm did not suggest there was any urgency in resolving its venue and jurisdiction objections. To the contrary, Qualcomm represented that it "would like at least a couple of weeks" to file its opening brief, and stated that "in light of what's going on in the other litigations, I don't think two weeks - there's nothing immediately pending that we need to -- I think two weeks is reasonable." Ex. B at 7. The Vice Chancellor ordered, among other things, that the parties attempt to stipulate to jurisdiction and, absent such a stipulation, that they submit to the Court by August 16 a briefing

¹ Nokia will not burden the Court with a recitation of the facts underscoring the need for prompt resolution of the merits of this action, which have been fully set forth in the Complaint, Nokia's Opening Brief in Support of its Motion to Remand, and Nokia's Motion to Expedite Proceedings With Respect to Motion to Remand.

schedule on Qualcomm's objections to venue and jurisdiction, with Qualcomm having the two weeks it requested to submit its opening brief.² Ex. B at 18, 27-28. In lieu of filing the Court-ordered briefing schedule, Qualcomm filed a Notice of Removal on August 16. The same day, Qualcomm also filed in this Court a Motion to Transfer and a sixteen-page Opening Brief setting forth its positions on venue and jurisdiction. At that time, Qualcomm did not claim there was any need for an expedited ruling on its Motion to Transfer.

On August 18, Nokia filed a Motion to Remand and an Opening Brief in support thereof. Nokia simultaneously filed a Motion to Expedite with respect to the Motion to Remand -- relief that was opposed by Qualcomm. This Court granted Nokia's Motion to Expedite later that day. Apparently concerned that the case will be promptly remanded to the Court of Chancery, Qualcomm now seeks to expedite briefing and scheduling for its Motion to Transfer to have it heard at the same time as Nokia's Motion to Remand.³

² In the Court of Chancery, Nokia was concerned that it would be irreparably harmed while Qualcomm's motion to dismiss or stay was pending. Nokia was, and remains, concerned that Qualcomm is continuing its campaign of commencing new patent infringement actions worldwide. Vice Chancellor Strine alleviated that concern to a degree by informing Qualcomm that he would immediately set a trial date if such behavior continued, and by ordering discovery to proceed pending resolution of the motion to dismiss or stay.

³ Although styled as a motion to consolidate, Qualcomm's motion is actually a motion to expedite. Qualcomm cannot piggy-back on the rationale of Nokia's Motion to Expedite because the issues raised by Nokia's Motion to Remand are completely unrelated to those raised by Qualcomm's Motion to Transfer.

ARGUMENT

A. Qualcomm Has Not Presented Any Basis For Expedition.

Qualcomm's two-page Motion to Consolidate does not set forth any reasoned basis supporting the relief sought. This fact alone is fatal to the request.⁴ Instead, Qualcomm selectively recites some of the procedural posture of the present action and vaguely states that it moves for such relief "in the interests of fairness and judicial efficiency." Qualcomm's understanding of judicial economy is misguided.

Judicial economy would be served if the Court denied Qualcomm's Motion to Consolidate, and decided Nokia's Motion to Remand before the Court and the parties are obligated to expend resources on the potentially moot issue of venue. The Motion to Remand raises a threshold question of subject matter jurisdiction. If the Court concludes, as Nokia believes it must, that it lacks subject matter jurisdiction and grants Nokia's Motion to Remand, no further action will be necessary on Qualcomm's Motion to Transfer. *See, e.g., LJM2 Co-Investment, L.P. v. LJM2 Capital Mgmt., L.P.*, 2003 WL 431684, at *6 (D. Del. Feb. 24, 2003). In contrast, if the Court grants the Motion to Transfer, the District Court in San Diego will still have to resolve the issue of subject matter jurisdiction on Nokia's Motion to Remand. Obviously, following that procedure would waste judicial resources, unnecessarily involve a second federal court in this matter, and further delay the underlying proceedings.

Promptly resolving the Motion to Remand is likely to advance proceedings on the underlying merits and prevent irreparable harm to Nokia. Conversely, resolving Qualcomm's

⁴ Qualcomm's failure to state a basis for the relief sought cannot be cured by a more detailed reply brief. *See* D. DEL. L. R. 7.1.4(G)(2) ("The party filing the opening brief shall not reserve material for the reply brief which should have been included in a full and fair opening brief.").

Motion to Transfer will have no effect on the merits. For example, as Vice Chancellor Strine recognized, Qualcomm's venue and jurisdiction objections should not delay discovery, as discovery on the merits will be necessary regardless of the venue. *See* Ex. B at 19, 32.

Finally, and most importantly, the alleged need for expedited treatment of Qualcomm's Motion to Transfer is belied by Qualcomm's representation to Vice Chancellor Strine that there was no need to resolve promptly its objections to venue and jurisdiction "in light of what's happening in the other litigations[.]" Ex. B at 8. Indeed, the Motion to Transfer seeks to have this case transferred to the Southern District of California for consolidation with another action (the "San Diego Action") that has been stayed since March 14, 2006. That action will remain stayed until the Federal Circuit rules whether the San Diego Action must be further stayed, under Section 3 of the Federal Arbitration Act, pending resolution of an ongoing arbitration between the parties. *See* Ex. C. If the Federal Circuit orders a stay, the San Diego Action will remain stayed until the arbitration is completed, which will likely be sometime in early 2007 (by which time Vice Chancellor Strine could have presided over a trial on the merits of Nokia's claims).

The San Diego Action is also subject to another stay pending the completion of a United States International Trade Commission ("ITC") investigation that has been initiated pursuant to a complaint Qualcomm recently filed against Nokia alleging infringement of three of the same patents at issue in the San Diego Action. The District Court must stay the San Diego Action, at least as to the three common patents, until the completion of the ITC investigation, currently scheduled for September 2007. *See* 28 U.S.C. § 1659(a). The District Court has scheduled a hearing for October 16, 2006 to decide whether the other claims in the San Diego Action should also be stayed pending the ITC investigation, to avoid splitting the case in two.

Given the status of the San Diego Action, there is no urgency whatsoever to Qualcomm's Motion to Transfer. If Qualcomm's Motion to Transfer is granted, Nokia's contract claims will be merged into an action that is currently stayed, and that is likely to remain stayed for many months. Qualcomm's Motion to Consolidate thus asks the Court and Nokia to "hurry up and wait," as it seeks to expedite proceedings with respect to a Motion that, if granted, will delay the case substantially. In these circumstances, Qualcomm's motion should be summarily denied.

B. The Court Should Make The Threshold Determination As To Whether It Has Subject Matter Jurisdiction Before Adjudicating Qualcomm's Motion to Transfer.

Notwithstanding Vice Chancellor Strine's offer to set a briefing schedule to address Qualcomm's venue and jurisdiction objections, Qualcomm improperly removed the instant action to this Court. Now, the Court must address the threshold issue of subject matter jurisdiction before it can address Qualcomm's Motion to Transfer.

The issue of subject-matter jurisdiction is "fundamentally preliminary," unlike issues concerning proper venue, which involve mere "personal privileges of the defendant, rather than absolute strictures on the court[.]" *Leroy v. Great W. United Corp.*, 443 U.S. 173, 180 (1979). Without subject matter jurisdiction, a court lacks the authority to transfer a case. *See, e.g., Shendock v. Director, Office of Workers' Comp. Programs*, 893 F.2d 1458, 1467 (3rd Cir. 1990); *Tifa Ltd. v. Republic of Ghana*, 692 F. Supp. 393, 398 (D.N.J. 1988) ("[T]he issue of venue cannot be decided prior to a determination that the court has subject matter jurisdiction over the action."). The Motion to Remand must therefore be considered before the Motion to Transfer. *See, e.g., Penn. v. Tap Pharm. Prods., Inc.*, 415 F. Supp. 2d 516, 521 (E.D. Pa. 2005) (reasoning remand motion should be resolved before venue because "[i]f this Court is to adjudicate any pretrial matters, it must satisfy itself that it has the power to do so"); *Polak v. Kobayashi*, 2005 WL 2008306, at *1 (D. Del. Aug. 22, 2005) (deciding motion to remand first, despite the fact

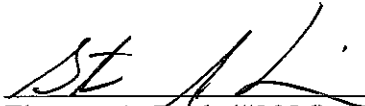
that it was filed thirteen days after motion to transfer); *Testquest, Inc. v. LaFrance*, 2002 WL 539071, at *2 (D. Minn. Apr. 6, 2002) ("[B]ecause the arguments about remand implicate the Court's jurisdiction, the Court must consider the remand issue first."); *Neely v. Union Nat'l Ins. Co.*, 2002 WL 32397266, at *6 (S.D. Miss. Sept. 18, 2002) (reasoning "[i]f a case is not properly removed, then it is not pending before the court" and concluding the Court should therefore decide a motion to remand before a motion to transfer). Thus, there is no reason to consolidate the briefing schedules for the two motions.

WHEREFORE, Nokia respectfully requests that the Court deny Qualcomm's Motion to Consolidate.

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 and Nokia Inc.


Dated: August 21, 2006

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2006, I electronically filed the foregoing document with the Clerk of Court using CM/ECF which will send notification of such filing(s) and by hand delivery to the following:

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EXHIBIT A



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August 10, 2006

VIA EMAIL

The Honorable Vice Chancellor Leo E. Strine, Jr.
State of Delaware
Court of Chancery
500 King Street
Wilmington, DE 19801

Re: *Nokia Corporation and Nokia, Inc., v*
QUALCOMM Incorporated, C.A. No. 2330

Dear Vice Chancellor Strine:

We write on behalf of defendant QUALCOMM Incorporated in opposition to Nokia's motion to expedite this proceeding. We submit that not only should the motion be denied, but this case should not proceed at all in this Court. When the relevant background is disclosed, the reasons are quite clear.

In this case, Nokia essentially asks this Court to declare the validity of affirmative defenses it has raised or will raise in patent infringement suits filed against Nokia Corporation and Nokia Inc. (collectively, "Nokia") by QUALCOMM in the United States District Court for the Southern District of California (San Diego division), in the United Kingdom, and before the United States International Trade Commission.

The San Diego suit was filed against Nokia in November 2005, asserting 12 patents against Nokia products that practice only the GSM family of standards (several of those patents have been declared standards-essential to ETSI and several are not standards-essential and therefore not even subject to the "FRAND" commitment which is the centerpiece of Nokia's defense recast as an affirmative claim in this Court). In December 2005, Nokia moved to dismiss or stay the action pending arbitration of Nokia's affirmative defenses, claiming QUALCOMM's claims had to be arbitrated based on a 2001 agreement between Nokia and QUALCOMM. The federal district court denied Nokia's motion in March, and Nokia responded by requesting that the district court stay the litigation pending appeal of the denial of its stay motion. The federal district court entered a stay pending appeal, and the appeal was argued to the U.S. Court of Appeals for the Federal Circuit last month. A decision is expected soon. Despite the passage of over nine months since QUALCOMM filed suit, Nokia has not yet

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answered the complaint in the San Diego suit. Meanwhile, arbitration between Nokia and QUALCOMM has proceeded in California over QUALCOMM's objection to the arbitrability of Nokia's affirmative defenses. Through the arbitration, Nokia, despite its express admission that the parties' 2001 agreement does not extend to GSM products, is seeking to derail QUALCOMM's infringement claims by arguing, among other things, that QUALCOMM is estopped from asserting its patents against Nokia's GSM products, effectively entitling Nokia to a royalty free license. QUALCOMM has filed a motion before the arbitrator to dismiss Nokia's estoppel claim, and the parties are awaiting a hearing date on that motion.

QUALCOMM's U.K. suit was filed in May 2006, asserting two patents against Nokia's products that practice only the GSM family of standards. Shortly before Nokia's answer was due in this suit in mid-July (Nokia having secured from QUALCOMM an extension to answer), it moved to dismiss or stay the proceeding, again based on the same arbitrability theories it advanced in the San Diego action. Nokia requested a late November hearing date on its motion. Although it is anticipated that a hearing will be held sooner than Nokia has requested, the motion has essentially stalled the U.K. action for three to four months.

Third QUALCOMM filed a complaint with the U.S. International Trade Commission in June 2006, and the ITC instituted an investigation concerning Nokia's infringement of six Qualcomm patents by Nokia products that practice only the GSM family of standards. One patent at issue in the ITC is a U.S. counterpart to one of the patents asserted in the U.K. proceeding, and three patents asserted in the ITC are also asserted in the San Diego action. Nokia's answer was filed with the ITC yesterday. As the attached will demonstrate (Ex. A hereto), Nokia's SIXTEENTH affirmative defense is the same FRAND claim it is asking this Court to adjudicate, and several of its other affirmative defenses correspond to the issues it has raised in the California arbitration.

Asserting that this Court is a "national court"¹ under the ETSI Rules of Procedure, Nokia seeks to leap frog the QUALCOMM actions it has stalled by asking this Court to declare - in advance of any of the pending infringement cases - that its FRAND affirmative defense is valid and effective to prevent QUALCOMM from pursuing the injunctive relief it seeks in these earlier-filed actions.² Nokia cannot dispute that the relief it seeks from this Court can be (and is

¹ This is a dubious assertion, considering that the ETSI's procedures deal with IPRs (intellectual property rights) and infringement issues. One would naturally think that ETSI's rules referencing "national courts" would refer to courts in the host country that have jurisdiction over patent infringement suits. These would be the federal courts in the U.S., not state courts.

² Among the relief Nokia seeks is a declaration that QUALCOMM is "barred from seeking injunctive relief" and a permanent injunction "enjoin[ing] Qualcomm worldwide from seeking such injunctive relief related to patents Qualcomm has declared essential to any standard." (Comp., WHEREFORE clauses A and B). As Nokia should know, this Court is unable to grant such relief. See *General Atomic Co. v. Felter*, 434 U.S. 12, 16 (1977) ("[T]he rights conferred by Congress to bring *in personam* actions in federal court are not subject to

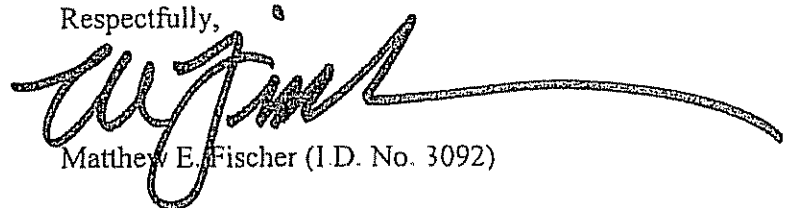
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being) pursued in these other actions. In effect, this is a typical "second-filed" action in which Nokia seeks to avoid application of *McWane*³ by focusing the Court on an affirmative defense and Nokia's alleged fear of "unjustified injunctive relief" being issued against it in "jurisdictions that will not afford Nokia adequate due process." (Comp. ¶37). Nokia's purported concerns do nothing to justify its request that this Court run an unprecedented level of interference with a federal court, a federal agency, and a U.K. court. It is clear that this Court should at least dismiss this case in favor of the other, first-filed actions, and it is possible that this action raises issues arising under federal law, which would form a basis to remove this action.

In any event, as Nokia's own dilatory efforts in the San Diego and U.K. actions demonstrate, there is no need for expedition here, and Nokia's motion to expedite must be denied. Indeed, it appears that Nokia's new-found supposed need for expedition results primarily from the fact that it is running out of options in the other suits, and now faces what it apparently sought to avoid: confronting QUALCOMM's infringement claims on the merits. While Nokia, putting the cart before the horse, would prefer an adjudication of its affirmative defense before having to confront QUALCOMM's infringement claims, this does not implicate threatened irreparable harm. See *Giammargo v Snapple Beverage Corp.*, 1994 WL 672698, at *2 (Del. Ch. Nov. 15, 1994).

For the foregoing reasons, defendant QUALCOMM respectfully submits that Nokia's motion to expedite should be denied. We look forward to discussing this matter more fully with Your Honor at the 11 a.m. hearing.

Respectfully,



Matthew E. Fischer (I.D. No. 3092)

rc/745643

cc: Lisa A. Schmidt, Esq.
Register in Chancery

abridgment by state-court injunctions, regardless of whether the federal litigation is pending or prospective."); *Donovan v. City of Dallas*, 377 U.S. 408 (1964); *Zeneca v. Monsanto*, 1996 WL 104254, at *4 n.3 (Del. Ch.) (V.C. Jacobs acknowledging the well established holding from *Donovan* that "a state court is without power to enjoin a litigant from litigating a claim in federal court."); *Paul N. Gardner Defined Plan Trust v. Draper*, 1993 WL 125517 (Del. Ch.); cf. *Maldonado v. Flynn*, 1979 WL 4632, at *3 (Del. Ch.) (holding that it was a violation of Court of Chancery Rule 11 to file a motion to enjoin a defendant from proceeding in federal court)

³ *McWane Cast Iron Pipe Corp. v. McDowell-Wellman Eng'g Co.*, 263 A.2d 281 (Del. 1970).

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EXHIBIT A

> PUBLIC VERSION <

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

Before the Honorable Robert L. Barton, Jr.

IN THE MATTER OF
CERTAIN MOBILE TELEPHONE
HANDSETS, WIRELESS
COMMUNICATION DEVICES, AND
COMPONENTS THEREOF

Investigation No. 337-TA-578

**RESPONSE OF NOKIA CORPORATION AND NOKIA INCORPORATED
TO THE COMPLAINT, AS SUPPLEMENTED, OF QUALCOMM
INCORPORATED AND NOTICE OF INVESTIGATION**

Pursuant to Commission Rule of Practice 210.13 (19 C.F.R. § 210.13), Respondents Nokia Corporation and Nokia Inc. ("Nokia" or "Respondent") hereby respond to the Complaint under Section 337 of the Tariff Act of 1930 filed by Qualcomm Incorporated ("Qualcomm" or "Complainant") on June 9, 2006, and supplemented on June 27, 2006, pursuant to which an investigation was instituted by the Commission on July 12, 2006.

It is Nokia's position that, among other things, Qualcomm is estopped from asserting the claims set forth in the Complaint and that the issue of estoppel is subject to arbitration under the arbitration clause of the Subscriber Unit and Infrastructure Equipment License Agreement dated July 2, 2001 between Qualcomm and Nokia. Nokia contends, therefore, that the ITC lacks subject matter jurisdiction to conduct this investigation. Nokia's response to the Complaint and the Notice of Investigation is made pursuant to the Commission Rules of Practice without waiving or intending to waive Nokia's right to arbitrate its estoppel defense and to seek dismissal of this investigation pursuant to 19 U.S.C. § 1337(c).

Nokia denies it has engaged in acts of unfair competition or violated Section 337 by importing, selling for importation, and/or selling within the United States after importation any products that infringe, directly, contributorily, and/or by inducement, any valid claim of United States Patent Nos. 5,452,473 ("the '473 patent"), 5,590,408 ("the '408 patent"), 5,655,220 ("the

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'220 patent"), 5,576,767 ("the '767 patent"), 5,452,104 ("the '104 patent"), 6,453,182 BI ("the '182 patent") (collectively the "Qualcomm Patents-In-Suit"). Nokia further denies that the patents are valid. Except as specifically admitted herein, Nokia denies all allegations of the Complaint, as supplemented.

Nokia has not had sufficient time and opportunity to collect and review all of the information that may be relevant and necessary to respond to the matters raised in Qualcomm's Complaint. Specifically, Nokia has not received all of the information requested in its discovery requests to Qualcomm. To the extent that any allegations of the Complaint refer to or rely upon such information not previously supplied to Nokia, Nokia is without information sufficient to admit or deny such allegations, and therefore denies same. Moreover, Nokia reserves the right to take such further positions and raise additional defenses as may become apparent as a result of further information which may be discovered subsequent to the filing of this Response.

ADMISSIONS AND DENIALS OF QUALCOMM'S SPECIFIC ALLEGATIONS

I. INTRODUCTION

1.1 Nokia admits that Qualcomm has requested that the United States International Trade Commission (the "ITC") commence an investigation pursuant to section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

1.2 Nokia denies each and every allegation to the extent that it alleges, directly or by implication, that any acts of Nokia constitute unfair acts and/or infringement of Qualcomm's patents. Nokia further denies that any of the Qualcomm Patents-In-Suit are valid. Nokia admits that it entered into a Subscriber Unit and Infrastructure Equipment License Agreement dated July 2, 2001 with Qualcomm. Nokia is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 1.2, and therefore denies the same.

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1.3 Nokia denies that any of the Qualcomm patents are valid. Nokia is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 1.3, and therefore denies the same.

1.4 Nokia denies that a domestic industry exists in the United States relating to any products covered by the Qualcomm patents. Nokia denies that Qualcomm United States' investments and expenditures in the engineering, research and development directed to the utilization and exploitation of the inventions claimed in the asserted patents exist as required by Section 337(a). Further, with respect to Qualcomm's letter of June 27, 2006 which purports to supplement Qualcomm's Complaint, Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein relating to Qualcomm's activities in the United States with respect to the creation of a domestic industry, and therefore denies the same. Nokia is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 1.4, and therefore denies the same.

1.5 Nokia admits that Qualcomm seeks relief from the ITC in the form of a limited exclusion order concerning the importation into the United States of all handsets and components thereof which Qualcomm alleges violate the Qualcomm Patents-In-Suit. Nokia also admits that Qualcomm seeks from the ITC a cease and desist order prohibiting the importation, marketing, advertising, demonstration, warehousing of inventory for distribution, sale and use of handsets in the United States pursuant to section 337(f) that Qualcomm alleges infringe the Qualcomm Patents-In-Suit. Nokia admits that it entered into a Subscriber Unit and Infrastructure Equipment License Agreement dated July 2, 2001 with Qualcomm. Except as expressly admitted herein, Nokia denies each and every allegation contained in paragraph 1.5

II. COMPLAINANT

2.1 Nokia admits that Qualcomm Incorporated is a Delaware corporation. Nokia is without sufficient knowledge or information to form a belief as to the truth of the remainder of the allegations contained in paragraph 2.1, and therefore denies the same.

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2.2 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 2.2, and therefore denies the same.

2.3 Nokia denies that any of the Qualcomm patents are valid. Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 2.3, and therefore denies the same.

III. PROPOSED RESPONDENTS

3.1 Nokia admits that the contact address for its head office is at Keilalahdentie 2-4, P.O. Box 226, FIN-00045 Nokia Group, Finland. Nokia further admits that its mobile phone business group is involved in the design, development and manufacture of handsets.

3.2 Nokia admits the allegations of paragraph 3.2 of the Complaint.

3.3 Nokia admits that it provides its customers with equipment, services and solutions for network operators. Nokia admits that it does not have a mobile phone manufacturing facility in the United States, although it does have a customization and logistics centre in the United States. Nokia further admits that the United States is one of Nokia's largest markets in terms of net sales, and that the United States was Nokia's largest market in terms of net sales in 2004. Except as expressly admitted above, Nokia denies the remaining allegations of paragraph 3.3.

IV. THE PRODUCTS AT ISSUE

4.1 Nokia admits that Qualcomm's complaint concerns certain wireless communication devices, and components thereof.

4.2 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 4.2, and therefore denies the same.

4.3 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 4.3, and therefore denies the same.

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4.4 Nokia denies the allegations in paragraph 4.4, including the allegation that Nokia infringes any valid claim of the asserted patents.

V. THE PATENTS-IN-SUIT

A. The '473 Patent

1. Identification of the Patent and Ownership by Qualcomm

5.1 Nokia admits that the '473 patent entitled "Reverse Link, Transmit Power Correction and Limitation in a Radiotelephone System," was issued on September 19, 1995, to Qualcomm as assignee, naming Ana L. Weiland, Richard K. Kornfeld, Richard J. Kerr, John E. Maloney and Nathaniel B. Wilson as inventors. Nokia further admits that Exhibit 1 attached to the Complaint appears to be a copy of the '473 patent. Nokia further admits that Exhibit 7 attached to the Complaint appears to be copy of the assignment of the '473 patent to Qualcomm. As to the balance of the allegations contained therein, Nokia, is without sufficient knowledge or information to form a belief as to the truth thereof, and therefore denies same.

5.2 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5.2, and therefore denies the same

2. Non-Technical Description of the Patented Invention

5.3 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5.3, and therefore denies the same.

5.4 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5.4, and therefore denies the same.

3. Foreign Counterparts to the '473 Patent

5.5 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5.5, and therefore denies the same.

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B. The '408 Patent

1. Identification of the Patent and Ownership by Qualcomm

5.6 Nokia admits that the '408 patent, entitled "Reverse Link, Transmit Power Correction and Limitation in a Radiotelephone System," was issued on December 31, 1996, to Qualcomm as assignee, naming Ana L. Weiland, Richard K. Kornfeld and John E. Maloney as inventors. Nokia further admits that Exhibit 2 appears to be copy of the '408 patent. Nokia further admits that Exhibit 8 appears to be a copy of the assignment of the '408 patent to Qualcomm. As to the balance of the allegations contained therein, Nokia, is without sufficient knowledge or information to form a belief as to the truth thereof, and therefore denies same.

5.7 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5.7, and therefore denies the same.

2. Non-Technical Description of the Patented Invention

5.8 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5.8, and therefore denies the same.

5.9 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5.9, and therefore denies the same.

3. Foreign Counterparts to the '408 Patent

5.10 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5.10, and therefore denies the same.

C. The '220 Patent

1. Identification of the Patent and Ownership by Qualcomm

5.11 Nokia admits that the '220 patent, entitled "Reverse Link, Transmit Power Correction and Limitation in a Radiotelephone System," was issued on August 5, 1997, to Qualcomm as assignee, naming Ana L. Weiland, Richard K. Kornfeld and John E. Maloney as inventors. Nokia further admits that Exhibit 3 appears to be a copy of the '220 patent. Nokia further admits that Exhibit 9 appears to be a copy of the assignment of the '220 patent to

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Qualcomm. As to the balance of the allegations contained therein, Nokia, is without sufficient knowledge or information to form a belief as to the truth thereof, and therefore denies same.

5.12 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5.12, and therefore denies the same.

2. Non-Technical Description of the Patented Invention

5.13 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5.13, and therefore denies the same.

5.14 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5.14, and therefore denies the same.

3. Foreign Counterparts to the '220 Patent

5.15 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5.15, and therefore denies the same.

D. The '767 Patent

1. Identification of the Patent and Ownership by Qualcomm

5.16 Nokia admits that the '767 patent, entitled "Interframe Video Encoding and Decoding System," was issued on November 19, 1996, to Qualcomm as assignee, naming Chong U. Lee and Donald Pian as inventors. Nokia further admits that Exhibit 4 appears to be a copy of the '767 patent. Nokia further admits that Exhibit 10 appears to be a copy of the assignment of the '767 patent to Qualcomm. As to the balance of the allegations contained therein, Nokia, is without sufficient knowledge or information to form a belief as to the truth thereof, and therefore denies same.

5.17 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5.17, and therefore denies the same.

2. Non-Technical Description of the Patented Invention

5.18 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5.18, and therefore denies the same.

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5.19 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5.19, and therefore denies the same.

5.20 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5.20, and therefore denies the same.

3. Foreign Counterparts to the '767 Patent

5.21 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5.21, and therefore denies the same.

E. The '104 Patent

1. Identification of the Patent and Ownership by Qualcomm

5.22 Nokia admits that the '104 patent, entitled "Adaptive Block Size Image Compression Method and System," was issued on September 19, 1995, to Qualcomm as assignee, naming Chong U. Lee as the inventor. Nokia further admits that Exhibit 5 appears to be a copy of the '104 patent. Nokia further admits that Exhibit 11 appears to be a copy of the assignment of the '104 patent to Qualcomm. As to the balance of the allegations contained therein, Nokia, is without sufficient knowledge or information to form a belief as to the truth thereof, and therefore denies same.

5.23 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5.23, and therefore denies the same.

2. Non-Technical Description of the Patented Invention

5.24 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5.24, and therefore denies the same.

5.25 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5.25, and therefore denies the same.

5.26 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5.26, and therefore denies the same.

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3. Foreign Counterparts to the '104 Patent

5.27 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5.27, and therefore denies the same.

F. The '182 Patent

1. Identification of the Patent and Ownership by Qualcomm

5.28 Nokia admits that the '182 patent, entitled "Wireless Telephone Airplane and Alarm Clock Modes," was issued on September 17, 2002, to Qualcomm as assignee, naming Stephen A. Sprigg and James A. Hutchison, IV as inventors. Nokia further admits that Exhibit 6 appears to be a copy of the '182 patent. Nokia further admits that Exhibit 12 appears to be a copy of the assignment of the '182 patent to Qualcomm. As to the balance of the allegations contained therein, Nokia, is without sufficient knowledge or information to form a belief as to the truth thereof, and therefore denies same.

5.29 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5.29, and therefore denies the same.

2. Non-Technical Description of the Patented Invention

5.30 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5.30, and therefore denies the same.

5.31 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5.31, and therefore denies the same.

3. Foreign Counterparts to the '182 Patent

5.32 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5.32, and therefore denies the same.

VI. UNFAIR ACTS OF THE RESPONDENTS

6.1 Nokia denies each and every allegation contained in paragraph 6.1, except Nokia admits that it entered into a Subscriber Unit and Infrastructure Equipment License Agreement dated July 2, 2001 with Qualcomm.

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6.2 Nokia denies that it directly or through its affiliates or third-parties exports to and imports into the United States handsets and components thereof that are covered by any of the claims of the Qualcomm Patents-In-Suit. Nokia denies each and every allegation to the extent that it alleges, directly or by implication, that any acts of Nokia constitute infringement of the Qualcomm Patents-In-Suit. Nokia admits that on September 9, 2005 Qualcomm provided Nokia with a list of certain patents and that on November 4, 2005 Qualcomm filed the complaint in Case No. 05 CV 2063 B(BLM) in the United States District Court for the Southern District of California. Except as expressly admitted above, Nokia denies the remaining allegations of paragraph 6.2.

6.3 Nokia denies each and every allegation contained in paragraph 6.3, including the referenced claim charts, to the extent that it alleges, directly or by implication, that any acts of Nokia constitute infringement of the Qualcomm Patents-In-Suit, including the '473 patent.

6.4 Nokia denies each and every allegation contained in paragraph 6.4, including the referenced claim charts, to the extent that it alleges, directly or by implication, that any acts of Nokia constitute infringement of the Qualcomm Patents-In-Suit, including the '408 patent.

6.5 Nokia denies each and every allegation contained in paragraph 6.5, including the referenced claim charts, to the extent that it alleges, directly or by implication, that any acts of Nokia constitute infringement of the Qualcomm Patents-In-Suit, including the '220 patent.

6.6 Nokia denies each and every allegation contained in paragraph 6.6, including the referenced claim charts, to the extent that it alleges, directly or by implication, that any acts of Nokia constitute infringement of the Qualcomm Patents-In-Suit, including the '767 patent.

6.7 Nokia denies each and every allegation contained in paragraph 6.7, including the referenced claim charts, to the extent that it alleges, directly or by implication, that

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any acts of Nokia constitute infringement of the Qualcomm Patents-In-Suit, including the '104 patent.

6.8 Nokia denies each and every allegation contained in paragraph 6.8, including the referenced claim charts, to the extent that it alleges, directly or by implication, that any acts of Nokia constitute infringement of the Qualcomm Patents-In-Suit, including the '182 patent.

VII. SPECIFIC INSTANCES OF UNFAIR IMPORTATION AND SALE

7.1 Nokia admits that a subset of its handsets and components thereof are sold for importation into the United States, imported into the United States or sold after importation into the United States. Nokia denies that it directly or through its affiliates or third-parties exports to and imports into the United States any handsets and components thereof that are covered by any of the claims of the Qualcomm Patents-In-Suit.

7.2 Nokia is without sufficient knowledge or information to form a belief as to the authenticity of Exhibit 41 and therefore denies the same. Nokia admits that Exhibit 42 appears to be a photograph of the packaging for the Nokia 6101 phone.

7.3 Nokia is without sufficient knowledge or information to form a belief as to the authenticity of Exhibit 43 and therefore denies the same. Nokia admits that Exhibit 44 appears to be a photograph of the packaging for the Nokia 6682 phone.

7.4 Nokia is without sufficient knowledge or information to form a belief as to the authenticity of Exhibit 45 and therefore denies the same. Nokia admits that Exhibit 46 appears to be a photograph of the packaging for the Nokia 9300 phone.

7.5 Nokia is without sufficient knowledge or information to form a belief as to the authenticity of Exhibit 47 and therefore denies the same. Nokia admits that Exhibit 48 appears to be a photograph of the packaging for the Nokia 6010 phone. Nokia admits that Exhibit 49 appears to be a photograph of the packaging for the Nokia 6102 phone. Nokia admits

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that Exhibit 50 appears to be a photograph of the packaging for the Nokia 6061 phone. Nokia admits that Exhibit 51 appears to be a photograph of the packaging for the Nokia 6030 phone.

7.6 Nokia is without sufficient knowledge or information to form a belief as to the authenticity of Exhibit 52 and therefore denies the same. Nokia admits that Exhibit 53 appears to be a photograph of the packaging for the Nokia 3220 phone. Nokia admits that Exhibit 54 appears to be a photograph of the packaging for the Nokia 3120 phone.

7.7 Nokia is without sufficient knowledge or information to form a belief as to the authenticity of Exhibit 55 and therefore denies the same. Nokia admits that Exhibit 56 appears to be a photograph of the packaging for the Nokia 6111 phone. Nokia admits that it does not have any manufacturing facilities for mobile phones in the United States. Except as expressly admitted herein, Nokia denies each and every allegation contained in paragraph 7.7.

VIII. CLASSIFICATION OF THE INFRINGING PRODUCTS UNDER THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

8.1 Nokia denies each and every allegation of paragraph 8.1, including to the extent that it alleges, directly or by implication, that any acts of Nokia constitute infringement of the Qualcomm Patents-In-Suit. Nokia also denies that cell phone products covered by the investigation are classified under the headings set forth in paragraph 8.1. See Additional information, paragraph 2, *infra*.

IX. LICENSEES

9.1 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 9.1, and therefore denies the same.

9.2 Nokia admits that it has entered into a license agreement with Qualcomm. Nokia further admits that Qualcomm has, in paragraph 1.2 of its Complaint, defined the products at issue in its Complaint as excluding those products allegedly licensed under the 2001 license agreement between Qualcomm and Nokia. Except as expressly admitted herein, Nokia denies each and every allegation contained in paragraph 9.2.

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X. THE DOMESTIC INDUSTRY

10.1 Nokia denies that Qualcomm satisfies any or all of the statutory criteria for finding a domestic industry under section 337(a)(2) and (3) or otherwise. As to the balance of the allegations contained in paragraph 10.1, Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations, and therefore denies same. Further, with respect to Qualcomm's letter of June 27, 2006 which purports to supplement Qualcomm's Complaint, Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein relating to Qualcomm's activities in the United States with respect to the creation of a domestic industry, and therefore denies the same.

A. Qualcomm's Engineering, Research and Development is Directed to Utilization/Exploitation of the Asserted Patents

10.2 Nokia denies that Qualcomm satisfies any or all of the statutory criteria for finding a domestic industry under section 337(a)(2) and (3) or otherwise. As to the balance of the allegations contained in paragraph 10.2, Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations, and therefore denies same. Further, with respect to Qualcomm's letter of June 27, 2006 which purports to supplement Qualcomm's Complaint, Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein relating to Qualcomm's activities in the United States with respect to the creation of a domestic industry, and therefore denies the same.

10.3 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 10.3, and therefore denies the same. Further, with respect to Qualcomm's letter of June 27, 2006 which purports to supplement Qualcomm's Complaint, Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein relating to Qualcomm's activities in the United States with respect to the creation of a domestic industry, and therefore denies the same.

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10.4 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 10.4, and therefore denies the same. Further, with respect to Qualcomm's letter of June 27, 2006 which purports to supplement Qualcomm's Complaint, Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein relating to Qualcomm's activities in the United States with respect to the creation of a domestic industry, and therefore denies the same.

10.5 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 10.5, and therefore denies the same. Further, with respect to Qualcomm's letter of June 27, 2006 which purports to supplement Qualcomm's Complaint, Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein relating to Qualcomm's activities in the United States with respect to the creation of a domestic industry, and therefore denies the same.

10.6 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 10.6, and therefore denies the same. Further, with respect to Qualcomm's letter of June 27, 2006 which purports to supplement Qualcomm's Complaint, Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein relating to Qualcomm's activities in the United States with respect to the creation of a domestic industry, and therefore denies the same.

10.7 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 10.7, and therefore denies the same. Further, with respect to Qualcomm's letter of June 27, 2006 which purports to supplement Qualcomm's Complaint, Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein relating to Qualcomm's activities in the United States with respect to the creation of a domestic industry, and therefore denies the same.

10.8 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 10.8, and therefore denies the same. Further,

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with respect to Qualcomm's letter of June 27, 2006 which purports to supplement Qualcomm's Complaint, Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein relating to Qualcomm's activities in the United States with respect to the creation of a domestic industry, and therefore denies the same.

B. Qualcomm has Significant U.S. Investment in Engineering, Research and Development

10.9 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 10.9, and therefore denies the same. Further, with respect to Qualcomm's letter of June 27, 2006 which purports to supplement Qualcomm's Complaint, Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein relating to Qualcomm's activities in the United States with respect to the creation of a domestic industry, and therefore denies the same.

10.10 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 10.10, and therefore denies the same. Further, with respect to Qualcomm's letter of June 27, 2006 which purports to supplement Qualcomm's Complaint, Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein relating to Qualcomm's activities in the United States with respect to the creation of a domestic industry, and therefore denies the same.

XI. RELATED LITIGATION

11.1 Nokia admits the allegations in paragraph 11.1 concerning the pending lawsuit among Qualcomm and Snaptrack, Inc., as plaintiffs, and Nokia Corp. and Nokia Inc., as defendants, including the fact that three of the patents being asserted in that case are also being asserted by Qualcomm in the present investigation. Except as expressly admitted above, Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 11.1, and therefore denies same.

11.2 Nokia admits the allegations set forth in paragraph 11.2 of the Complaint.

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11.3 Nokia admits that it is currently arbitrating issues relating to the Subscriber Unit and Infrastructure Equipment License Agreement dated July 2, 2001, including whether Qualcomm is estopped from asserting patents that Qualcomm now claims relate to GSM technology, including the patents in suit in this investigation. There is no hearing on the merits scheduled. Except as expressly admitted above, Nokia denies the allegations contained in paragraph 11.3.

11.4 Nokia is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 11.4, and therefore denies the same.

XII. RELIEF REQUESTED

12.1 In its Complaint, Qualcomm requests certain relief from the ITC. Nokia does not believe that any response to this prayer for relief is required. If a response is required, however, Nokia specifically denies that it currently infringes or has ever infringed any valid claim of any Qualcomm patent and further denies that Qualcomm is entitled to any relief from the ITC whether or not requested. Nokia further denies each and every factual allegation in this prayer for relief, including subparagraphs thereof.

RESPONSE TO THE NOTICE OF INVESTIGATION

Nokia denies that there is a violation of Section 337 by reason of the alleged infringement of any asserted claim of the '473 patent, the '408 patent, the '220 patent, the '767 patent, the '104 patent, and the '182 patent ("the patents-in-suit") insofar as these allegations pertain to the importation or sale of any products manufactured by or on behalf of Nokia. Nokia denies that there is a protectable domestic industry, as required by Section 337(a)(2) and defined by Section 337(a)(3), with respect to any of the patents-in-suit. Nokia further denies that it is in the public interest to grant any relief to Qualcomm in connection with this Investigation. Nokia denies that Qualcomm is entitled to the specific relief it requests. Except as expressly admitted herein, Nokia denies the allegations contained in the Notice of Investigation.

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ADDITIONAL INFORMATION REQUIRED UNDER RULE 210.13(b)

By providing the following information, Nokia intends only to supply data required by 19 C.F.R. § 210.13(b). Nokia specifically denies that any of the information or data supplied below relates to or supports any allegations of infringement against Nokia or any violation of 19 U.S.C. § 1337.

Pursuant to Rule 210.13(b), Nokia provides the following additional information:

1. The quantity and value of Nokia's products accused of infringement imported into the United States in calendar year 2005 is provided in Confidential Exhibit 1 to this response.
2. Between 1989-1996, the Harmonized Tariff Schedule item numbers for the Nokia products accused of infringement were 8525.20.6060 and 8525.20.6070. During 1997, the Harmonized Tariff Schedule item number for a Nokia product accused of infringement was 8525.20.9070. Since 1998, the Harmonized Tariff Schedule item numbers for the Nokia products accused of infringement are 8525.20.9070 and 9504.90.4000.
3. Nokia's capacity to manufacture the products identified by Qualcomm in its Complaint is provided in Confidential Exhibit 1 to this response. In calendar year 2005, the United States constituted a substantial market for Nokia.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Invalidity)

1. The patents-in-suit are invalid because they each fail to comply with the requirements of 35 U.S.C. § 101 et seq., including, without limitation §§ 102, 103 and/or 112.

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SECOND AFFIRMATIVE DEFENSE

(Noninfringement)

2. Nokia has not directly infringed, indirectly infringed, contributed to or induced infringement of any valid or enforceable claim of the patents-in-suit, and has not otherwise committed any acts in violation of 35 U.S.C. § 271.

THIRD AFFIRMATIVE DEFENSE

(Lack of Unfair Act)

3. Nokia has committed no unfair acts.

FOURTH AFFIRMATIVE DEFENSE

(Lack of Domestic Industry)

4. Qualcomm has not adequately alleged and cannot prove the existence of a domestic industry, as required by Section 337(a)(2) and defined by Section 337(a)(3), in connection with any of the patents-in-suit, or that a such domestic industry is in the process of being established.

FIFTH AFFIRMATIVE DEFENSE

(Failure to State a Claim)

5. Qualcomm's complaint fails to state a claim upon which relief can be granted.

SIXTH AFFIRMATIVE DEFENSE

(Express or Implied License)

6. Qualcomm's claims are barred in whole or in part pursuant to an actual license or under the doctrine of implied license. Nokia's assertion of this defense is made without waiving or intending to waive its right to arbitrate this issue.

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SEVENTH AFFIRMATIVE DEFENSE

(Unenforceability – Estoppel, Acquiescence, Waiver, and In Pari Delicto)

7. Qualcomm is barred in whole or in part by the doctrines of estoppel, acquiescence, waiver, and/or in pari delicto from enforcing the patents-in-suit against Nokia. Nokia's assertion of this defense is made without waiving or intending to waive its right to arbitrate this issue.

EIGHTH AFFIRMATIVE DEFENSE

(Equitable Estoppel)

8. Qualcomm is barred in whole or in part by the doctrine of equitable estoppel based, among other things, on its failure to mention any of the patents-in-suit during development and approval of certain standards related to GSM, its failure to mention the patents-in-suit during negotiations and execution of the parties' Subscriber Unit and Infrastructure Equipment License Agreement, its failure to promptly declare any patents-in-suit to the relevant standard setting organizations, and its commitment to make some or all of the patents-in-suit available to Nokia and others for a fair, reasonable, and non-discriminatory royalty rate. Nokia's assertion of this defense is made without waiving or intending to waive its right to arbitrate this issue.

NINTH AFFIRMATIVE DEFENSE

(Unenforceability – Patent Exhaustion/First Sale Doctrine)

9. Qualcomm is barred in whole or in part by the doctrine of patent exhaustion/first-sale doctrine from enforcing the patents-in-suit against Nokia.

TENTH AFFIRMATIVE DEFENSE

(Unenforceability – Prosecution Laches)

10. Qualcomm is barred in whole or in part by delay in prosecuting the patent applications resulting in the patents-in-suit.

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ELEVENTH AFFIRMATIVE DEFENSE

(Prosecution History Estoppel)

11. By reason of the prosecution before the United States Patent and Trademark Office ("USPTO") leading to the patents-in-suit and any applications or patents related to the patents-in-suit, and by reason of admissions made by or on behalf of the applicant for these patents and related applications and patents, Qualcomm is estopped from claiming infringement by Nokia of one or more of the claims of such patents-in-suit.

TWELFTH AFFIRMATIVE DEFENSE

(Unclean Hands)

12. The patents-in-suit are void and unenforceable by reason of the equitable doctrine of unclean hands.

THIRTEENTH AFFIRMATIVE DEFENSE

(Patent Misuse)

13. Qualcomm is barred from asserting the patents-in-suit by the equitable doctrine of patent misuse.

FOURTEENTH AFFIRMATIVE DEFENSE

(Lack of Jurisdiction)

14. The Commission lacks jurisdiction pursuant to § 337.

FIFTEENTH AFFIRMATIVE DEFENSE

(Relief Not in the Public Interest)

15. The relief sought by Qualcomm does not and would not further the public interest and there are strong public policy reasons for denying Qualcomm the relief sought.

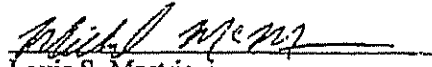
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SIXTEENTH AFFIRMATIVE DEFENSE

(Breach of Contract)

16. The relief sought by Qualcomm breaches Qualcomm's commitments and enforceable contracts with the relevant Standard Setting Organizations and their members, including Nokia, which license all or some of the patents-in-suit for a fair, reasonable and non-discriminatory royalty.

Respectfully submitted,



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Counsel for Nokia Corporation and Nokia, Inc.

Dated: August 10, 2006

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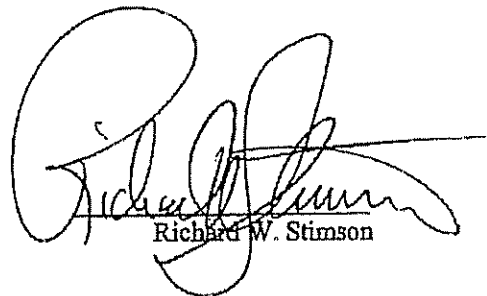
**VERIFICATION OF RESPONSE TO THE COMPLAINT AND
NOTICE OF INVESTIGATION INCLUDING AFFIRMATIVE DEFENSES**

I, Richard W. Stimson, declare, in accordance with 19 C.F.R. §§ 210.4 and 210.13, under penalty of perjury under the laws of the United States of America, that the following statements are true:

1. I am legal counsel for Nokia, Inc. and am duly authorized to sign this Response on behalf of Nokia Corporation and Nokia, Inc.;
2. I have read the foregoing Response;
3. To the best of my knowledge, information and belief, based upon reasonably inquiry, the foregoing is well founded in fact and is warranted by existing law or a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and
4. The foregoing Response is not being filed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 10th day of August 2006


Richard W. Stimson

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **RESPONSE OF NOKIA CORPORATION AND NOKIA INCORPORATED TO THE COMPLAINT, AS SUPPLEMENTED, OF QUALCOMM INCORPORATED AND NOTICE OF INVESTIGATION (PUBLIC)** was served as indicated, to the parties listed below, this 10th day of August 2006:

The Honorable Marilyn R. Abbott
SECRETARY
U.S. INTERNATIONAL TRADE COMMISSION
500 E Street, S.W., Room 112A
Washington, DC 20436
(VIA HAND DELIVERY -- Original + 6 copies)

The Honorable Robert L. Barton, Jr.
ADMINISTRATIVE LAW JUDGE
U.S. INTERNATIONAL TRADE COMMISSION
500 E Street, S.W., Room 317
Washington, DC 20436
(VIA HAND DELIVERY -- 2 copies)

David Lloyd, Esq.
INVESTIGATIVE ATTORNEY
OFFICE OF UNFAIR IMPORT INVESTIGATIONS
U.S. INTERNATIONAL TRADE COMMISSION
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(VIA HAND DELIVERY)

ON BEHALF OF COMPLAINANTS
QUALCOMM INCORPORATED

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1200 Seventeenth Street, N.W., Fifth Floor
Washington, DC 20036

EXHIBIT B

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

NOKIA CORPORATION and NOKIA,	:	
INC.	:	
	:	
Plaintiffs	:	
	:	
vs.	:	Civil Action
	:	No. 2330-N
QUALCOMM INCORPORATED,	:	
	:	
Defendant	:	

- - -

Chancery Court Chambers
New Castle County Courthouse
Wilmington, Delaware
Friday, August 11, 2006
11:00 a.m.

BEFORE: HON. LEO E. STRINE, JR., Vice Chancellor.

- - -

SCHEDULING CONFERENCE

- - -

CHANCERY COURT REPORTERS
500 North King Street - Suite 11400
Wilmington, Delaware 19801-3759
(302) 255-0525

1 APPEARANCES:

2 LISA SCHMIDT, ESQ.
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5 Richards, Layton & Finger
6 -and-
7 FREDERICK LORIG, ESQ.
8 A. WILLIAM URQUHART, ESQ.
9 of the California Bar
10 Quinn Emanuel Urquhart Oliver & Hedges, LLP
11 -and-
12 JANE MUTIMEAR, ESQ.
13 Of the United Kingdom Bar
14 Bird & Bird
15 for Plaintiffs Nokia Corporation and
16 Nokia, Inc.

10 MATTHEW E. FISCHER, ESQ.
11 RICHARD L. HORWITZ, ESQ.
12 Potter, Anderson & Corroon LLP
13 -and-
14 RICHARD J. STARK, ESQ.
15 of the New York Bar
16 Cravath Swaine & Moore
17 -and-
18 CHRISTIAN E. MAMMEM, ESQ.
19 of the California Bar
20 Day Casebeer Madrid & Batchelder
21 for Defendant QUALCOMM Incorporated

17 ALSO PRESENT:

18 RICHARD W. STIMSON, ESQ.
19 ARI LAAKKONEN, ESQ.
20 In-house counsel for Nokia

21 - - -

1 THE COURT: We have someone on the
2 phone?

3 MR. FISCHER: Yes. We have
4 Chris Mammem from the Day Casebeer firm in California
5 for QUALCOMM. Richard Stark of Cravath for QUALCOMM,
6 and Rich Horowitz of my firm.

7 MS. SCHMIDT: Your Honor, this is
8 Fred Lorig and William Urquhart from the
9 Quinn Emmanuel Urquhart firm for Nokia, and
10 Elizabeth Tucker of Richards Layton, Jane Mutimear
11 from Bird & Bird, and Ari Laakkonen and
12 Richard Stimson of Nokia, Inc.

13 THE COURT: Good morning.

14 I've read all the papers. I'm happy
15 to consider, you know, whether to -- this Court has a
16 role to play in this dispute. But I do think the
17 first thing that needs to be done is essentially brief
18 up whether this is a proper place to bring this
19 dispute, especially given the pending actions. And
20 I'm influenced by the fact that I don't gainsay the
21 importance of this to Nokia. I'm sure this is a very
22 important thing and you've got multiple litigations
23 going on. You have multiple litigation going on. I
24 mean, it wasn't like it all popped up and you said we

1 got to get going on this and we're going to shut this
2 down entirely right away.

3 Now, I understand you've got sort of a
4 whack-a-mole situation going on, or you think that
5 there's proliferating injunction actions from QUALCOMM
6 everywhere.

7 The reality is, though, that doesn't
8 necessarily mean you don't have to put your marker
9 down somewhere where the cases are pending. I'm not
10 prejudging that, but I'm at least interested in that
11 notion. I'm at least interested in the notion in
12 whether or not this would be considered the national
13 court.

14 Delaware courts are rightly concerned
15 when Federal Court's intrude in issues of state law.
16 Frankly, Delaware doesn't particularly like it when
17 some states have gotten creative and dishonor the
18 contract rights of securities holders. And the
19 corporations sell securities by trying to intrude on
20 the internal affairs of corporations through all kinds
21 of interesting statutes, which don't seem to honor
22 those contracts or give full faith and credit to the
23 laws of other states. What comes about consideringly
24 with that sort of concern to protect one less

1 legitimate territory is to also recognize that there
2 are areas in which we don't have the same legitimacy
3 as the federal courts. I don't know if this is one.
4 I'm not prejudging it. When I see something -- a
5 reference to national courts -- I have to say it
6 doesn't occur to me immediately that it's necessarily
7 the case that any court within a nation qualifies for
8 that. It might have been rationally thought by
9 whatever the entity was.

10 What that means is that we're a bunch
11 of nations bringing together -- coming together.
12 We're trying to work together. We're going to presume
13 on the part of the nations involved in this that the
14 judicial system in those nations will responsibly
15 adjudicate the disputes and that ultimately those
16 systems will culminate in some national court which
17 will bless whatever rulings are done at the lowest
18 level of the system. It's not necessarily clear to
19 me -- it is true that you could possibly get a writ of
20 certiorari from the Delaware Supreme Court to the
21 United States Supreme Court. It's not immediately
22 clear to me that that's what they meant.

23 I don't know anything about Germany.
24 I know more about soccer and beer from Germany than

1 the German courts, but some of them have federal
2 governments or different local governments where they
3 may have court systems that aren't part of the nation.
4 You know, I just don't know.

5 What I also know is that this is
6 clearly no more a court -- a national court of the
7 United States than any of the federal district courts,
8 and it's not clear to me why the request for
9 injunctive relief that's sought here could not have
10 been sought in those other pending cases, which is not
11 only can, you know, QUALCOMM not get an injunction,
12 Your Honor, we are moving affirmatively for you to
13 issue an injunction against them because of what
14 they're trying to do to us worldwide by dishonoring
15 their obligations to us under this essentially -- this
16 contract that arises by virtue of this and present
17 that to a federal judge.

18 I had not known the federal courts
19 were without authority to issue injunctions with
20 nationwide effect and perhaps international effect
21 with the party before it who's invoked their
22 jurisdiction.

23 Without going on about it, I mean,
24 those are the things I'm going to be interested in.

1 We've got the first-filed doctrine, we've got the
2 notion of what this is. When I first got the case and
3 I read -- this is a classic joint venture. Somebody
4 has got to leave it in Delaware law. What you've got
5 is a de facto contract by virtue of something going on
6 in France, and QUALCOMM happens to be a Delaware
7 corporation. I'm happy to entertain a tighter
8 briefing schedule. I would ask Nokia -- not Nokia --
9 I would ask QUALCOMM to commit to when they could file
10 its motion to dismiss.

11 When do you think, Mr. Fischer, you
12 could get a brief in, or something like that?

13 MR. FISCHER: I think we'd like at
14 least a couple of weeks. Is that asking for too much?

15 THE COURT: They'll tell you that it
16 is. I think a couple weeks is not too much.

17 MR. FISCHER: Well, in light of what's
18 going on in the other litigations, I don't think two
19 weeks -- there's nothing immediately pending that we
20 need to -- I think two weeks is reasonable.

21 MR. LORIG: If I can respond. Two
22 weeks normally, I think, would be reasonable, even if
23 you're the other party. The problem we have is we're
24 dealing with an injunction-case-of-the-day. Yesterday

1 they filed another case in Germany asking for an
2 injunction. If we're going to take time and brief
3 this matter for a couple of weeks, can we at least get
4 a stipulation from QUALCOMM that, until the courts
5 jurisdiction is decided, they won't file any more
6 patent infringement suits in foreign countries. I'm
7 not talking about the United States. That's already
8 done. I'm talking about outside of the United States.

9 Will QUALCOMM agree, in return for a
10 civilized briefing schedule so we can air the issues,
11 not to file any further patent infringement actions in
12 countries outside of the United States?

13 MR. FISCHER: I'd have to discuss that
14 with people, Your Honor.

15 THE COURT: I do think it is -- one of
16 the things -- if these suits are going to arise on the
17 map, I assume they're like red dots and start looking
18 like some global infection. We'll get the guy from
19 house to diagnose -- I mean, I think that is a
20 problem, Mr. Fischer, that he we have to deal with
21 here. I hadn't known there was a suit filed
22 yesterday.

23 MR. FISCHER: I didn't know that
24 either, Your Honor.

1 MR. LORIG: We were notified by
2 European counsel.

3 MR. URQUHART: And by QUALCOMM.

4 MR. LORIG: And by QUALCOMM.

5 Just to let Your Honor know what's
6 going on beyond the surface. Yesterday there was a
7 meeting between QUALCOMM and Nokia. As a Nokia
8 representative walked into the room to discuss issues,
9 they agreed to the news of another, we believe,
10 vexatious lawsuit, this time filed to Germany. That's
11 the pattern we're in. That's why we're seeking the
12 Court's injunctive relief.

13 THE COURT: Look, I'm a fairly direct
14 person. That kind of behavior is not going to aid
15 QUALCOMM with any -- when I consider at least the
16 McWane issue -- McWane being our first-filed case
17 doctrine, which is, you know, if QUALCOMM wants to
18 bring an injunction action and say, "Look, we want to
19 have a fair fight. It's basically the same issue all
20 over the world. We shouldn't litigate it in 17
21 different courts. We should pick one good forum. You
22 know, we want it in the Federal Court that we first
23 filed in. Let's agree. Let's get it done. Let's
24 have a trial, and let's make this be the template."

1 You know, that's a fairly strong position to be in
2 when you've got a first-filed doctrine.

3 On the other hand, if QUALCOMM says,
4 "No, what we really do want is some sort of
5 international infection of lawsuits to afflict Nokia,
6 we want the possibility of inconsistent adjudications,
7 we want them to get lawyers and master all these
8 different intricacies, put aside civil code versus
9 common law. Why don't we get a sampling of common law
10 nations? Why don't we get Australia, UK, the United
11 States, and then we'll get, frankly, former
12 dictatorships, which are still arguably that way but
13 have court systems and we'll see, you know, how that
14 kind of goes." And then, if that's the situation,
15 that really cuts very strongly against worrying about
16 first-filed doctrine.

17 MR. FISCHER: Your Honor, I don't
18 think that's what's going on. I think it's a matter
19 of taking protective actions in the areas where it's
20 appropriate to take it, in light of the nature of the
21 patents at issue and where they are and where the
22 patents are protected.

23 THE COURT: Am I wrong to think that
24 this is essentially a European-wide dispute or is it

1 maybe even also extends to the continental United
2 States?

3 MR. LORIG: Your Honor, it's really
4 worldwide. They filed their action in San Diego the
5 end of last year. It's stayed at the moment. They
6 filed actions before our last settlement negotiation.
7 They greeted us with filing an action in the UK. Now,
8 before this one, they greeted us with filing an action
9 in Germany. If we have another settlement
10 negotiation, we'll probably have another patent action
11 in another European or Asian country.

12 The idea that they're trying to
13 protect their interests, if you'll pardon me, is, I
14 think, based on the fact that perhaps counsel is not
15 aware of how old these patents are. Most of them have
16 priority dates of 1990, 1994, 1995. There's severe
17 laches on past damages. QUALCOMM publicly announced
18 that the only reason they have filed these actions
19 under GSM patents is to try to pressure Nokia into
20 signing. QUALCOMM's management publicly announced to
21 the investment community that they weren't pursuing
22 any other company on their GSM patents, that they're
23 only trying to enforce them against Nokia in order to
24 pressure Nokia to sign an agreement on third

1 generation, meaning nonGSM patents. And they told the
2 rest of the industry they didn't have to worry about
3 these GSM patents.

4 So I don't -- there's a lot of details
5 and facts. I don't believe my opposing counsel is
6 familiar with them yet. Certainly what he says on the
7 surface seems reasonable. But the facts are quite
8 different, and that's why we thought about where to
9 go. QUALCOMM is a Delaware corporation. Nokia Inc.
10 is a Delaware corporation. This is pure
11 interpretation of contract issue. It's a valuation of
12 patent rights -- how to value what a FRAND royalty is
13 as compared to a normal royalty. What is fair? Yes,
14 the obligation is interpreted under French law, but
15 the rule is you go to your national courts.

16 In the United States we have a
17 different situation than we do in Europe. In Europe
18 you have one unified court system. Here, because we
19 are a federation of states, you have both a state
20 system and a federal system. There is no federal
21 question here. You've got two Delaware corporations,
22 you've got an issue of interpreting and enforcing a
23 contract, and there is not a federal question here.

24 THE COURT: It is an interesting -- I

1 mean, I understand what you're saying. There's no
2 federal question of federal law what view the federal
3 courts would take of their jurisdiction, given the
4 terms of -- I forget the European entities. What's
5 it's called?

6 MR. LORIG: ETSI. E-T-S-I.

7 THE COURT: Whatever ETSI says. What
8 the federal courts would view their obligation as
9 being is it may not be -- intuitively it's not as
10 relevant to me for this reason, which is the reason
11 why Nokia is here is because QUALCOMM is filing patent
12 infringement actions which it believes are improper
13 and at a time when what Nokia says should be going on
14 is, frankly, we ought to be getting so-called FRAND
15 rates and this should not be an issue at all.

16 When they filed their patent
17 infringement action in the U.S. District Court in San
18 Diego -- it's clearly a defense. It may be even a
19 counterclaim, and it would seem to get around the
20 jurisdictional issues. From what I read in the letter
21 from Potter Anderson today, you were fighting about
22 going to arbitration. And no one teed up, you know,
23 this question. And it may have been because that was
24 the first of the actions.

1 I also don't know what's before the
2 U.S. International Trade Commission, whether that is a
3 forum that would qualify under ETSI. I don't know
4 whether anybody has worked --

5 MR. LORIG: May I respond, Your Honor?
6 The ITC, as Your Honor may know, only has the power to
7 grant injunctive relief. It doesn't have the power to
8 define a reasonable royalty or a fair and reasonable
9 royalty. Moreover, by law, it's determinations are
10 not -- don't give rise to collateral estoppel,
11 res judicata issues, preclusion issues because of the
12 nature of the Court system.

13 To go back to Your Honor's point about
14 San Diego. As we understood the law, if somebody has
15 filed an action which triggers an arbitration right,
16 you waive that right. The first thing you don't do is
17 ask for arbitration. We asked for that. The judge
18 denied it. The arbitration went forward anyway. The
19 federal circuit has heard the appeal. But we have not
20 teed up in that case the right to an injunction or how
21 to define fair, reasonable --

22 THE COURT: What's happening with
23 arbitration?

24 MR. LORIG: It's ongoing.

1 Mr. Casebeer is on the phone. We both participated.

2 MR. MAMMEM: In the arbitration right
3 now is pending QUALCOMM's motion to dismiss the main
4 claim in the arbitration on Rule 12(b)(6) grounds.
5 We're awaiting a hearing date on that motion.

6 MR. LORIG: Your Honor, the issues do
7 not include a right to an injunction --

8 THE COURT: I guess what I'm saying
9 is, who brought the action in the U.S. District Court
10 in California?

11 MR. MAMMEM: QUALCOMM did.

12 THE COURT: Right. For patent
13 infringement?

14 MR. MAMMEM: Yes.

15 THE COURT: And why wouldn't Nokia say
16 that that was -- you know, that one of the reasons why
17 that action is not viable is because QUALCOMM is
18 acting in violation of ETSI?

19 MR. MAMMEM: Your Honor, we think
20 that's exactly the right question. As we've seen from
21 the response that Nokia filed yesterday, they appear
22 to have asserted both the issues that they raised --
23 that Nokia raised -- before the arbitrator, as well as
24 this ETSI issue as affirmative defenses in that

1 action. In the district court action, Nokia has not
2 yet been required to file an answer because of the
3 procedural posture of that action. That would be the
4 appropriate forum for these issues to be aired.

5 MR. LORIG: One would have thought, as
6 Your Honor has said, that the reasonable thing to do
7 would be for QUALCOMM to have filed this action in
8 San Diego, which after all is its home base, tee up
9 the issues there.

10 What happened is, after the case was
11 stayed and the arbitration started going forward, they
12 didn't like some of the things that were happening in
13 the arbitration. They then filed an action in the ITC
14 on several of the same patents that were at issue in
15 San Diego. When they didn't like the way things were
16 going, they filed the UK action. You see the problem?

17 THE COURT: I understand that. As a
18 litigator will, you changed my words around to put the
19 onus on QUALCOMM.

20 I don't know what gave rise to the
21 arbitration right. Was it a contract between QUALCOMM
22 and Nokia?

23 MR. LORIG: Yes, it is a contract.
24 Unfortunately, because we don't have a protective

1 order, without permission of my opposing counsel I
2 can't discuss its contents because --

3 THE COURT: Would it sweep within it
4 arguably the ETSI claim?

5 MR. LORIG: I don't believe so, Your
6 Honor.

7 THE COURT: I'll give you my standard
8 pitch on American -- not American businesses in
9 general. No one whines more about the cost of
10 litigation than businesses and doctors. In my
11 experience as a judge, no source of litigation delay
12 or complexity or a waste are more common than
13 businesses and doctors. I say doctors because anybody
14 who has had a doctor practice break up, where people
15 go under tables and pull out plugs, steal records, do
16 things -- doctors love litigation when they're playing
17 offense; they hate it when they're playing defense.
18 Businesses whine all the time, you know, but they
19 spend a gazillion amount of dollars and human energy
20 every year fighting about what forum to be in.

21 You know, it may be you all think I
22 can do it well on both sides and that you can
23 stipulate that I'll do it. You probably can't because
24 you know you just hate each other. Your clients hate

1 each other and they're going to fight about anything.
2 You could have the best -- universally conceded --
3 best judge in the world by both sides in a blind taste
4 test. If they happen to agree on that person, they
5 would then back away.

6 What I'm getting at and what we're
7 going to get to quickly -- I mean, I will say this to
8 QUALCOMM. If I find out tomorrow there's an action in
9 Belgium and an action in the Netherlands, then I'm
10 going to set a trial date. And we'll go, you know,
11 hell bent for leather with all the discovery in the
12 world to get this tried wherever it has to be,
13 including in my court, if I conclude that it's going
14 to be here. But because it's going to be somewhere,
15 there will be no waste in the discovery.

16 What was done in Germany was done in
17 Germany. We'll start with QUALCOMM having a brief in
18 two weeks.

19 What would Nokia want in terms of
20 answering?

21 MR. LORIG: I think we'll get our
22 response in one week, Your Honor, since they are not
23 stipulating to stay their hand on filing future --

24 THE COURT: You only want a week?

1 Okay. Get on the books quick.

2 MR. STARK: Your Honor, may I speak
3 briefly?

4 THE COURT: Yes.

5 MR. STARK: Your Honor, to your point
6 that a number of suits have been filed by QUALCOMM for
7 patent infringement, I just wanted to make clear for
8 the record that there are patents of different nations
9 involved in these different actions, and each patent
10 of a different nation gives rise to a separate and
11 completely distinct set of rights. For example, the
12 U.S. patents that are at issue in the San Diego
13 litigation give rise to the right to potentially
14 exclude products from being offered, sold, made or
15 used in the United States, but do not extend
16 necessarily to other nations. The same would be true
17 of patents of other nations that are at issue in other
18 litigation.

19 So I just wanted to make the point,
20 Your Honor, that it's not a simple case of
21 proliferating litigation, but rather there are quite
22 distinct rights at issue. In order to protect those
23 rights, QUALCOMM may need to seek to bring cases in
24 different jurisdictions.

1 THE COURT: As I understand your
2 friend's point, that I guess in the territories
3 governed by ETSI, which would be essentially the
4 European union -- is that correct?

5 MR. LORIG: Yes, Your Honor.

6 MR. STARK: That's correct, Your
7 Honor.

8 THE COURT: -- that there is an
9 overriding issue of whether essentially what QUALCOMM
10 is limited to is essentially making, you know, sure
11 that Nokia pays FRAND rights for the technologies in
12 all those territories, and that the overarching issue
13 that Nokia seeks is that essentially the European
14 unionwide -- instead of charging folks like Nokia
15 FRAND rights for these essential technologies, it's
16 essentially trying to create a hostage situation
17 where, instead of charging FRAND rights, it charges
18 something way too expensive or keeps people out of the
19 market all together. That's what I understand is the
20 issue.

21 MR. STARK: That is potentially a
22 common issue. Your Honor, we would submit that
23 Nokia's position is utterly without merit on that. I
24 just wanted to make sure that the record was clear.

1 THE COURT: Right.

2 What I'm saying is, if it is an
3 overarching issue and I can't at this point judge
4 whether it's just without merit, whether it's utterly
5 without merit -- you know, whatever adverbial tag line
6 we want to put on it -- I can't judge that. But if
7 it's possibly a good defense and you all can't figure
8 out where to fight about it and it looks like the
9 infection is spreading throughout the European union,
10 then I am going to set a trial date and at least get
11 the issue -- get discovery going.

12 What I would strongly advise that you
13 do -- one of the things I would say to Nokia, don't
14 be, you know, day foolish here and say we'll do our
15 brief in a week. Let's just be careful about that.
16 All I'm saying is, maybe you can anticipate all the
17 arguments that they're going to have and you're going
18 to look -- maybe you're going to get the stuff in
19 ETSI. I don't know if there's an official English
20 version of ETSI.

21 MR. URQUHART: The website.

22 THE COURT: The history of ETSI and
23 what it means. I'll just -- why don't you figure out
24 a place to have this fight.

1 MR. LORIG: On behalf of Nokia, we
2 would stipulate that the Delaware Chancery Court can
3 resolve this dispute and each side stay their hand on
4 other litigations until this issue is resolved.
5 Because these are two large mature companies and there
6 is an honest dispute, apparently, between what the
7 FRAND obligation means, and it should be resolved. We
8 would stipulate to jurisdiction here. And I would
9 hope counsel would ask their clients before rejecting
10 it so that can be decided. Because the problem that
11 we're going to get into is we can literally have
12 scores of lawsuits around the world, not just in
13 Europe, with differing interpretations of what the
14 FRAND obligation means. Here, where there is
15 jurisdiction over QUALCOMM and there isn't
16 jurisdiction in the national courts in Europe, here's
17 the one place it can be decided.

18 THE COURT: What I'm saying is, if
19 they had thought of this court first, you know, I
20 expect that what Nokia would be saying is, we're a
21 Finnish corporation. And the fact that a few of our
22 cell phones come into Delaware doesn't mean why are we
23 the heck in the Delaware Court of Chancery. Now,
24 Strine's got a great hairstyle and we dig that; but,

1 you know, aside from that, you know, you just can't
2 really get it.

3 Now I understand there is a Nokia --
4 that the U.S. subsidiary is here. What I'm saying
5 is -- I would say to both sides -- I realize -- and
6 even in something just with the dispute -- the fact
7 that one side or the other picked the forum first
8 becomes, you know, some sort of psychological barrier
9 to rationality. I could as easily say to Nokia, "Why
10 not agree to go back to the U.S. District Court in
11 San Diego, lift the stay with respect to this issue
12 and have it out there." I think your friends from
13 QUALCOMM would be in a very difficult position to say
14 that a U.S. District Court is not a national quorum.
15 That would deprive me and our Delaware friends of the
16 ability to participate in this.

17 I'm happy to do the work. This
18 court -- one of the advantages of Delaware is, you
19 know, we have to play fair. That's the nature of our
20 business. We can't play favorites and have it work
21 for our state. It just doesn't work.

22 The Nokia subsidiary's a Delaware
23 subsidiary; QUALCOMM is a Delaware corporation.
24 Probably neither of your corporations have as many of

1 your operations here as my former boss and a U.S.
2 senator would like. So it's not like we could favor
3 the headquarters versus anything. Usually people --
4 we're indifferent to that. We're trying to come with
5 a fair outcome.

6 If you can agree that I'm the place,
7 you know, that becomes easier. Then you can enter
8 into a stipulation that's binding.

9 My concern about that is, again, the
10 psychic notion, which is that QUALCOMM has been
11 brought and it didn't choose this place. You know, if
12 what Nokia's objective is is to get a decision, what
13 I'm saying to you, I am going to set a trial date and
14 I am going to make you all have your depositions taken
15 and do all that kind of stuff if these things keep
16 coming up.

17 It may that be what you can agree on,
18 even though it deprives me of the fun, is that the
19 forum that QUALCOMM chose as its first American court,
20 which might even be more convenient for some of the
21 litigators working for Nokia, since, you know, you're
22 out there in the land of Gwyneth and stuff, would be
23 that, you know, you do it in San Diego.

24 MR. LORIG: One of the problems is the

1 judge in San Diego -- Judge Brewster -- is a senior
2 judge, just had an operation for prostate cancer, has
3 announced he's going to retire in September of next
4 year. Some of these European cases won't be tried and
5 decided by the middle of next summer. The timing,
6 frankly, isn't good.

7 You know, one of the reasons, as I
8 said we're here, is for exactly the reasons Your Honor
9 enunciated: this is a neutral court.

10 MR. MAMMEM: The response to that is
11 that, if we had started litigating the San Diego
12 action back in November when we filed, we would be
13 well-advanced in the San Diego forum at this point.

14 THE COURT: Well, Mr. Mammem, you
15 represent --

16 MR. MAMMEM: QUALCOMM.

17 THE COURT: You're at what firm?

18 MR. MAMMEM: The Day Casebeer firm.

19 THE COURT: I guess what I'm saying
20 is, you know, things like Judge Brewster -- if
21 Judge Brewster is genuinely retiring, he probably
22 knows that. And I would assume that he -- you know,
23 as I would assume about most of my judicial
24 colleagues -- that he cares deeply about doing

1 justice. And that to the extent that the time frame
2 that's involved here doesn't comport with his
3 retirement plans, that there is this thing called
4 reassignment.

5 I would say to Mr. Stark and
6 Mr. Mammem, you know, this court is fair. We do
7 things pretty well. I think I know that the Cravath
8 firm has once in a while gotten a decent result here.
9 And so -- certainly the Potter Anderson firm has.

10 So I think the question becomes
11 whether it's really like you just want to hurt each
12 other, and you just want to have this sort of
13 uncertainty. That may be a business decision that
14 none of the lawyers have anything to do with. It's
15 just simply we want to hurt each other, and nobody
16 needs to respond to that because each side is going to
17 say, "Of course we wouldn't do that. We wouldn't have
18 just 17 lawsuits just because it gives us business
19 leverage." And the other side say, "Of course we
20 wouldn't do the same either. We wouldn't duck a
21 particular forum just to come here and make it" -- you
22 know, in Delaware we have that phrase, we don't -- we
23 say it about every other day -- we didn't just fall
24 off the turnip truck, which I think can also be

1 interpreted to mean I didn't just fall off the turnip
2 truck. Everybody knows I fell off it five years ago,
3 without a helmet, and I've suffered permanent damage
4 ever since. I have never fallen off the turnip truck.
5 I know there's jousting going on. I know this means a
6 lot to your clients.

7 What we're going to do is, I want a
8 tight briefing schedule. Think about that week. I'm
9 not going -- I want a briefing schedule to me by next
10 Wednesday.

11 MR. FISCHER: We'll do that, Your
12 Honor.

13 THE COURT: Think about your time
14 frame. If there are other lawsuits, then discovery is
15 going to go forth and it's going to be on an expedited
16 basis. So QUALCOMM, to some extent, is going to be in
17 control about whether expedited discovery begins;
18 otherwise discovery is not stayed but it will go under
19 the usual deadlines. I would like a report back at
20 the same time I get a schedule about whether you've
21 conferred about whether there is a forum you could
22 agree on to go first about these threshold issues and,
23 frankly, to stay the other litigations. There may be
24 some complexity there.

1 I heard Mr. Stark say it's a good
2 point. There may have to be some sort of tolling
3 agreement between QUALCOMM and Nokia to indicate that
4 QUALCOMM is not -- if its time has already lapsed,
5 it's lapsed. But that during the nothing -- simply
6 the pendency of any stay to get done in the first
7 things won't be -- that part of the delay won't be
8 attributed as laches and that sort of thing.

9 MR. LORIG: Your Honor, we'd stipulate
10 to that on the record right now. That's not a
11 problem. The problem is, again, the fact that we're
12 getting an injunction action in a week.

13 THE COURT: Mr. Stark, can you take
14 that back to your client?

15 MR. STARK: Yes, Your Honor.

16 THE COURT: It also gives me a chance
17 and will create a little record here, which will help
18 other courts to flesh out really whether this is --
19 these people are acting like children in a way that's
20 unfair or they simply, you know -- because I think if
21 you can get -- at some point, when you've got the idea
22 that QUALCOMM will be able to protect its interest in
23 all the jurisdictions, we'll get a fair shot in a good
24 forum of presenting its side in one of the national

1 controversies, but yet Nokia will get to advance this
2 overarching thing and it could be done in a good
3 quality forum that's neutral in a prompt way.

4 If one side or the other is objecting,
5 then they suggested, frankly, this is a situation
6 where counsel have a duty to step into your clients
7 and say, "No, you can't act in a vexatious way."
8 Let's have a fair fight on the merits. We may win or
9 lose, but we have that opportunity, and we're not
10 going to afflict 13 different countries with a case.

11 MR. LORIG: May I respond, Your Honor?

12 THE COURT: Yes.

13 MR. LORIG: That's exactly what the
14 problem is and why we're here. They have asked for a
15 July 2007 trial date in England, but the FRAND issues
16 would not be decided until after that. You decide the
17 patent issues first, injunction first, the other
18 issues second.

19 Same in Germany. You're going to get
20 the patent issues decided within a year. You're not
21 going to get to the other issues.

22 THE COURT: Right.

23 What I'm saying is, I'm sensitive to
24 the need -- I understand what Nokia is saying. I

1 think the vulnerability that Nokia has is are we a
2 national court and the fact that could these -- this
3 defense be presented in prior pending actions. That's
4 why I'm suggesting to QUALCOMM it ought to think very
5 hard about the other options it brings and whether
6 it's willing to stipulate in somewhere else. If it
7 prefers -- San Diego is a lovely place. I actually
8 never spent any time in the city. I only spent my
9 time on Coronado. It has sufficient proximity to the
10 ocean and to fish tack companies that I never
11 actually -- except driving to the airport -- spending
12 any time there, other than the Padres are an awesome
13 team. You know, you've heard me on that. I want to
14 hear about the fight and I want a briefing schedule.

15 MR. FISCHER: By Wednesday?

16 THE COURT: Yes.

17 MR. LORIG: Should that briefing
18 schedule be for an expedited proceeding so that this
19 matter will be decided before these various midsummer
20 problems we're going to have? We've got European
21 decisions by the middle of next year.

22 THE COURT: No. I think I've been
23 pretty clear.

24 What I've said is, I want a schedule

1 for the completion of briefing on a motion to dismiss
2 or stay, essentially on the forum issue writ large. I
3 am not staying discovery in any case. But if there
4 are actions -- if QUALCOMM files an action anywhere
5 else than it's already done, then I'm going to set a
6 trial date. And I will turn what is discovery that's
7 going to be ongoing and on a normal basis, I will turn
8 that into expedited discovery.

9 I've got plenty of time to set a trial
10 date for early next year. One thing we are capable of
11 doing in this court is I have no doubt in the first --
12 well, the first half of August 2006 -- that we can be
13 to trial in early 2007, you know, if we have to.

14 I'm also assuming there's been some
15 discovery done between the parties somewhere. Not
16 even in the arbitration?

17 MR. LORIG: Not on these issues, Your
18 Honor.

19 THE COURT: Not on FRAND?

20 MR. LORIG: Not on FRAND. Not under
21 right to injunction. Those aren't the issues in
22 arbitration. There's four discrete issues and these
23 are not among them because the contract in question,
24 which I'm not allowed to discuss on pain of blowing a

1 confidentiality clause because QUALCOMM filed two
2 cases against TI saying they lost their license by
3 talking about the agreement --

4 THE COURT: Are you telling me that
5 this dispute is entirely -- that dispute is entirely
6 separate from ETSI?

7 MR. LORIG: Yes, Your Honor. I'm
8 saying that that is entirely separate from ETSI and
9 FRAND.

10 THE COURT: Mr. Stark, would you --
11 who is handling that for --

12 MR. MAMMEM: This is Chris Mammem.

13 Your Honor, as I believe I mentioned
14 earlier, the dispute that's currently pending in the
15 California arbitration does appear to be a separate
16 set of arguments from the ETSI argument. However, as
17 we've seen in the ETSI action, where Nokia filed its
18 answer yesterday, they have raised both issues as
19 affirmative defenses. Nokia has not yet filed its
20 answer in the San Diego action, and we would have
21 every reason to believe that they would in the due
22 exercise of care for their client to assert both sets
23 of issues as defenses in that action once they're
24 required to answer there as well.

1 THE COURT: Okay. But that implies
2 that the ETSI provision will somehow extend to --

3 MR. MAMMEM: Several of the patents
4 that are asserted in the San Diego action have been
5 declared standards essential under ETSI. That's the
6 triggering event, as I understand it, for Nokia to be
7 raising this issue.

8 THE COURT: Okay. But is what's at
9 issue in San Diego have to deal with what happens in
10 the United States or in Europe, which is, the duty --
11 the so-called duty, if it exists under ETSI to allow
12 people to use your technology on a FRAND basis, does
13 that extend outside the European union?

14 MR. MAMMEM: That is an issue that I'm
15 not prepared to speak to today.

16 THE COURT: Is that Nokia's position?

17 MR. LORIG: Our position is the ETSI
18 obligation extends throughout the world, Your Honor.

19 THE COURT: So that it would be a fair
20 response to the injunction action in California to say
21 ETSI says you can't do it.

22 MR. LORIG: Except it's not an
23 injunction action. They're primarily seeking damages.

24 THE COURT: But they can't get damages

1 if they're breaching their ETSI rights; right? Then
2 they're denying you the chance to use the technology
3 on the basis that they're supposed to; right?

4 MR. LORIG: No, Your Honor. I think
5 that's the whole issue.

6 Looking at the San Diego action apart
7 from an injunction, they sue and they say you're
8 infringing on our patent, we're entitled to damages.
9 And the response would be, yes, you're entitled to a
10 royalty, not as --

11 MR. MAMMEM: We pled in the San Diego
12 action seeking both damages and injunctive relief.

13 MR. LORIG: Yes, it could be teed up
14 there.

15 THE COURT: And it could also be teed
16 up more broadly, which is not only as a defense and
17 that the royalty -- whatever royalty you should pay is
18 a FRAND rate, but more generally as an affirmative --
19 as a counterclaim you could be seeking an injunction.
20 Is that right?

21 MR. LORIG: We could seek the same
22 injunction from the Federal Court we are seeking from
23 this court, except for the fact that it's again not a
24 federal question --

1 THE COURT: It's not a Delaware law
2 question either.

3 MR. LORIG: It's a contract question,
4 Your Honor. It's strictly contract.

5 THE COURT: What I'm saying is, you
6 would have every right, given that they brought you
7 into Federal Court, for you now to raise this as a
8 counterclaim and an affirmative defense and seek an
9 injunction. It would not be a jurisdictional problem
10 on the part of the Federal Court.

11 MR. LORIG: It wouldn't be, except
12 that case is stayed pending arbitration.

13 THE COURT: That case is stayed. This
14 case didn't exist; right?

15 MR. LORIG: Right.

16 THE COURT: The great thing about
17 stays is they can be lifted.

18 MR. MAMMEM: We will stipulate to the
19 lifting of that stay immediately, if Nokia would
20 agree.

21 MR. FISCHER: It was filed by Nokia.

22 MR. LORIG: The issue is, you can't --
23 are they stipulating that we can pursue the
24 arbitration issues in arbitration and that the

1 San Diego case will be dismissed, we win in
2 arbitration, and then we come back to Delaware and
3 have this decided, because the issues in arbitration
4 are such that no San Diego case could have been filed,
5 would have been filed? If we win the arbitration, the
6 San Diego case must be dismissed with prejudice on all
7 issues.

8 MR. MAMMEM: That's the nature of an
9 affirmative defense, and they ought to be litigated in
10 due course as affirmative defenses in the patent
11 infringement case.

12 MR. LORIG: Your Honor, with all
13 deference, I don't think I heard an answer to my
14 question.

15 THE COURT: I don't think I did
16 either. What I'm hearing is the kind of jousting that
17 I'm going to stop, because it's one of my law clerk's
18 last day and I'm not going to miss lunch with her
19 over -- because it's not helpful.

20 You all need to take a deep breath and
21 with a cool head and warm heart think about this
22 rationally, which is what I just heard Mr. Mammem.
23 It's a need answer. But the fact is that Nokia is now
24 seeking to raise more than an affirmative defense.

1 It's seeking to obtain an injunction that goes further
2 to that. The question is: are they going to get a
3 forum -- if you come to me and say you can do it in
4 the U.S. District Court for the District of San Diego
5 but not until this arbitration is completed, and then
6 you say that's not unfair to them because they're the
7 ones that raised the arbitration issue -- I haven't
8 seen the contract. It sounds like you've got a lot
9 mixed up in there. It sounds like you're suing in
10 Germany and the UK. It's probably not under the same
11 contract that has the arbitration clause.

12 MR. LORIG: I would like to ask
13 QUALCOMM's permission to submit to the Judge -- the
14 Court -- a copy of the -- the contract at issue. We
15 have QUALCOMM's permission?

16 MR. MAMMEM: I believe that would be
17 fine to submit it under seal, or under whatever
18 confidentiality agreement.

19 THE COURT: Don't submit it to me
20 until next Wednesday in the context of something.

21 How far along in the arbitration --
22 this will be the last line of questioning -- how far
23 along are you in this arbitration?

24 MR. LORIG: I would say we're halfway

1 along. We've teed up a proffer on how we're going to
2 prove the issues that we've raised in arbitration.
3 They filed a motion to dismiss. The arbitrator's
4 currently considering them. We think the motions are
5 going to be denied and we'll tee up the arbitration
6 hearing. It should be within the next couple three
7 months.

8 THE COURT: Then would you do some
9 discovery?

10 MR. LORIG: There's going to be a
11 little discovery. One of the key witnesses is
12 unfortunately dying of cancer and we're having a
13 little difficulty getting opposing counsel to agree on
14 a way of taking his deposition -- a way that doesn't
15 aggravate his health. There may be a little
16 additional discovery after that.

17 MR. MAMMEM: Mr. Lorig is correct.
18 The motion to dismiss is pending. We believe that
19 motion will be granted, obviously. If it's denied,
20 then there will be some amount of discovery to be
21 taken before the merits issue is teed up.

22 THE COURT: Is the arbitrator somebody
23 really super special that Nokia loves?

24 MR. LORIG: No. The arbitrator was

1 somebody jointly picked by both sides. His name is
2 Les Weinstein. He's a retired trial lawyer. He
3 doesn't have Your Honor's economic background but he's
4 got a lot of common sense.

5 THE COURT: You may have to go over
6 what my economic background is. Sort of lower middle
7 class.

8 Good. I'm glad to know that his folks
9 had some money.

10 I guess what I'm wondering here is,
11 you know, it doesn't sound to me like you're all
12 that -- the arbitration is always a murky process.
13 You sit here about halfway through, struck me as
14 you're not -- I wouldn't call that halfway through. I
15 wouldn't even call it halfway through the first phase
16 of anything.

17 Part of what you all should be
18 thinking about is -- maybe it's this fellow with a
19 better economic background than I have, maybe he does
20 it all. Maybe you get through the motion and say,
21 "Well, we'll live by what the dismissal thing is. But
22 if the claims go forward, we'll go back to the judge,
23 lift the stay, and we'll do it all in the District
24 Court of San Diego. But we'll do it promptly." What

1 Nokia gets out of that is it gets a chance to present
2 its FRAND-ETSI argument. But you do it all in one
3 expedited trial before someone, especially since you
4 haven't really taken the discovery or anything.

5 That would involve Nokia obviously
6 giving up something, which is it loves this judge or
7 loves this arbitrator or loves arbitration. More
8 likely what it had is, it had -- it was sued by
9 QUALCOMM. And then the first thing you do is you
10 figure out how can you defeat the suit. And if you
11 have a contract that says, "Well, we can decide or
12 dispute somewhere else," even if you don't even
13 necessarily think that somewhere else is better, you
14 tend to cling to that at that point in time. I mean,
15 I hate to say it's that primitive, but I do think a
16 lot of times it's that primitive and that, you know,
17 it's there so we will use it. If we can get a punter
18 over here, worrying about it delays them playing
19 offense. Now Nokia wants to play offense. And it
20 wants something that probably an arbitrator doesn't
21 have any prayer of being able to give it, which is an
22 injunction that would have a collateral effect in
23 other nations.

24 And one of the responsible trade-offs

1 might be to go to Judge Brewster and say, "We're going
2 to put this all in the U S. District Court. Your
3 Honor, you're a great judge. You had a great career.
4 You're leaving next September. Our time frame is
5 something else. Let's get it reassigned mutually to
6 somebody who can handle it." The parties stipulate to
7 expedite this and have this be the case that goes
8 forward, put all your claims before him and go. That
9 sounds like a fairly -- you know, that sounds like you
10 would all look like pretty sensible business people
11 and lawyers if you did that.

12 MR. LORIG: May I respond? That would
13 be about as I think acceptable as a suggestion to
14 QUALCOMM. We could litigate this in Helsinki court.
15 I think the whole advantage of being here is, one, you
16 can get something resolved quickly in the Delaware
17 Chancery Court; two, you have a neutral forum; three,
18 it's a place where companies from around the world
19 know they're going to get a fair, neutral --

20 THE COURT: It's making us -- our head
21 is going to explode here in Chancery because we feel
22 so good and that you love us. I don't know any reason
23 why a judge -- a federal district judge in
24 San Diego -- you know, is going to favor QUALCOMM over

1 Nokia. I don't know if the stadium is named after
2 anybody out there.

3 MR. LORIG: QUALCOMM Stadium.

4 MR. MAMMEM: Not anymore.

5 THE COURT: And it's a federal
6 district judge. But you know, you may be just sort of
7 stuck with that.

8 I would say on the other hand to
9 Nokia -- as I said, I'm willing to do the work. This
10 Court will do the work. But again, I would say that
11 to QUALCOMM -- it may be QUALCOMM -- you sent them to
12 arbitration. They may want to get all their claims
13 before one thing. Maybe you agree it's the Southern
14 District of New York. There are courts -- there are
15 judges in federal courts who will take this very
16 seriously. I'm not implying that the Court that it's
17 in isn't. If it needs to be done within the next five
18 or six months, we'll do that.

19 I had the Oracle case and Judge Walker
20 had the Oracle antitrust thing. He did that antitrust
21 trial just as promptly as any of us in Chancery would
22 and he pumped out a decision.

23 Again, I didn't realize -- you can see
24 how big a Padre fan I am. I still -- the idea that a

1 federal judge is going to rule for QUALCOMM --

2 MR. LORIG: Judge Brewster's fair, and
3 I wouldn't want to indicate anything other than that.
4 It's the difficulties when you have an international
5 problem like this. You know, clients are
6 understandably hesitant to go into the other company's
7 home court. It has nothing to do with individuals,
8 Your Honor.

9 THE COURT: I understand. Part of the
10 problem is, you all picked this court now. As a
11 result, if you had gone to them and said, "Why don't
12 we have Chancery" -- "why don't we think about
13 Chancery? Our operations are Delaware, you're
14 Delaware. Why don't we have Chancery do it." You
15 might not have a reflex. But now they chose a forum,
16 you chose a forum. And what it tends to mean is it's
17 got to be some other forum.

18 You know, you all need to read the
19 transcript. Think about whether what I'm saying is
20 true or not. I think it is about psychologically how
21 you deal with it. Talk to your clients rationally and
22 think about, you know, what you're going to do. If
23 you can't, we'll finish the motion practice and we'll
24 worry about that then. Okay?

1 So I'll hear from you next Wednesday.

2 (Court adjourned at 1:22:50 p.m.)

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CERTIFICATE

I, DIANE G. MCGRELLIS, Official Court Reporter of the Chancery Court, State of Delaware, do hereby certify that the foregoing pages numbered 3 through 44 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Vice Chancellor of the State of Delaware, on the date therein indicated.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, this 14th day of August, 2006.



Official Court Reporter
of the Chancery Court
State of Delaware

Certification Number: 108-PS
Expiration: Permanent

EXHIBIT C

FILED

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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

QUALCOMM INCORPORATED AND
SNAPTRACK, INC.,

Plaintiffs,

v.

NOKIA CORPORATION AND
NOKIA, INC.,

Defendants,

Civil No.: 05CV2063-B(BLM)

**ORDER DENYING DEFENDANTS'
MOTION TO DISMISS, GRANTING
DEFENDANTS' MOTION FOR A
MORE DEFINITE STATEMENT
WITH LEAVE TO AMEND, DENYING
DEFENDANTS' MOTION TO STAY
PENDING ARBITRATION, AND
GRANTING DEFENDANTS' MOTION
TO STAY PENDING APPEAL [13-1 TO
13-3]**

I. INTRODUCTION

Before the Court are Defendants Nokia Corporation and Nokia Inc.'s (collectively "Nokia") Motion to Stay the instant litigation pending the outcome of an arbitration proceeding and Motions (1) to dismiss the complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and (2) for a more definite statement pursuant to Rule 12(e) of the Federal Rules of Civil Procedure against Plaintiffs Qualcomm Incorporated

05cv2063

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1 (“Qualcomm”) and SnapTrack, Inc. (“SnapTrack”), a subsidiary of Qualcomm. For the
2 reasons discussed below, the Court **DENIES** Defendants’ Motion to Dismiss, **GRANTS**
3 Defendants’ Motion for a More Definite Statement and **GRANTS** Plaintiffs ten days leave
4 to amend, **DENIES** Defendants’ Motion to Stay pending arbitration, and **GRANTS**
5 Defendants’ Motion to Stay Pending Appeal.

6 **II. BACKGROUND**

7 In July 2001, Qualcomm and Nokia entered into a “Subscriber Unit and
8 Infrastructure Equipment License Agreement” (“the CDMA Agreement”) whereby
9 Qualcomm granted Nokia a non-exclusive license to use certain of Qualcomm’s patents to
10 make/sell products that incorporated CDMA¹ technology. The CDMA Agreement contains
11 an arbitration clause that requires arbitration of all disputes arising out of or relating to the
12 CDMA Agreement.

13 On November 4, 2005, Plaintiffs filed a patent infringement suit against Nokia
14 alleging that Nokia infringed eleven patents assigned to Qualcomm and one patent assigned
15 to Snap Track. After Qualcomm filed its complaint, Nokia initiated an arbitration
16 proceeding against Qualcomm on December 20, 2005, in Los Angeles, California. In its
17 demand for arbitration, Nokia seeks declarations that (1) Qualcomm engaged in misconduct
18 concerning the CDMA Agreement that bars it from asserting any of the patents in the
19 instant suit and (2) under Section 14 of the CDMA Agreement, Nokia is free to challenge
20 the validity of the six Pre-1994 Qualcomm patents in the instant action.

21 Nokia responded to the complaint on January 4, 2006, by filing the instant motions
22 for a stay, for dismissal, and for a more definite statement. In its motion to stay, Nokia
23 argues that because the instant patent infringement suits fall within the purview of an
24 arbitration clause in the CDMA agreement, the Court should stay the instant case pending
25 arbitration. Qualcomm opposes these motions. The motions came on for hearing on
26

27 ¹CDMA refers to Code Division Multiple Access, i.e. a wireless telecommunications standard.
28

1 February 13, 2006 and March 13, 2006.

2 **III. DISCUSSION**

3 **A. Nokia's Motion for a Stay under Federal Arbitration Act**

4 Nokia moves for a mandatory stay of the instant suit under 9 U.S.C. § 3 of the
5 Federal Arbitration Act. Section 3 provides in pertinent part:

6 If any suit or proceeding be brought in any of the courts of the United States upon
7 any issue referable to arbitration under an agreement in writing for such arbitration,
8 the court in which such suit is pending, upon being satisfied that the issue involved
9 in such suit or proceeding is referable to arbitration under such an agreement, shall
10 on application of one of the parties stay the trial of the action until such arbitration
has been had in accordance with the terms of the agreement, providing the applicant
for the stay is not in default in proceeding with such arbitration. 9 U.S.C. § 3
(2005).

11 Thus, according to Section 3, the instant litigation must address an issue that is "referable"
12 to arbitration. Nokia argues that because the issues of (1) whether Qualcomm engaged in
13 misconduct concerning the CDMA Agreement that bars it from asserting any of the patents
14 in the instant suit and (2) whether Section 14 in the CDMA Agreement limits Nokia's
15 ability to challenge the validity of the patents in suit are arbitrable, the instant litigation
16 addresses issues that are "referable" to arbitration. However, there is a difference between
17 Nokia's proving that it initiated an arbitration action on these issues and proving that the
18 instant patent infringement suit is in fact referable to arbitration.

19 The estoppel and Section 14 defenses are not in the instant case. The instant case
20 involves allegations that Nokia infringed twelve patents in suit. The products that are listed
21 in the complaint are non-CDMA products. As such, the Court finds that the patent
22 infringement issues in the instant case are not even remotely connected to the 2001 Agreement
23 that deals with CDMA products and are not referable to arbitration. Therefore, the Court is not
24 satisfied under 9 U.S.C. § 3 that the issues involved in the instant case are referable to
25 arbitration and accordingly **DENIES** Nokia's Motion to Stay arbitration under the Federal
26 Arbitration Act.

1 **B. Court's Discretion to Stay the Action**

2 Alternatively, Nokia moves the Court to exercise its broad discretion to stay the
3 instant action pending arbitration. Factors that courts consider in granting a stay include (1)
4 the harm a stay might cause, (2) the hardship or inequity a non-stay will cause, and (3) the
5 judicial efficiency and economy a stay may cause. CMAX, Inc. v. M. Hall, 300 F.2d 265,
6 268 (9th Cir. 1962). Nokia asserts a stay will result in judicial economy because the
7 arbitration may be dispositive if Qualcomm is estopped from bringing the instant action.
8 Nokia further argues that it will suffer prejudice if a stay is not granted because it will
9 needlessly have to spend millions of dollars in litigation in this Court.

10 The Court has inherent power to manage its docket. Here, the Court does not
11 consider the issues before the arbitrator dispositive for the instant suit because the
12 infringement issues in the instant case are not arbitrable, as discussed above. Additionally,
13 judicial efficiency counsels in favor of the Court's not staying the action because six of the
14 patents that are in suit in this action are also in suit in a related case: Qualcomm v.
15 Broadcom (Case No. 05CV1392). As such, a stay would also impede that case as well.
16 Therefore, the Court **DECLINES** to exercise its discretion to stay this case pending
17 arbitration.

18 **C. Nokia's Motion to Stay the Case Pending Appeal**

19 During oral argument, Nokia moved for the Court to stay the case pending Nokia's
20 appeal of the Court's order denying Nokia's motion for a stay pending arbitration. The
21 Court hereby **GRANTS** Nokia's motion to stay pending appeal and **STAYS** the case for
22 ten (10) days to provide Nokia the opportunity to file an appeal with the Federal Circuit. If
23 Nokia does not file an interlocutory appeal within ten days (i.e. by **March 24, 2006**), the
24 litigation in the instant case will continue. If Nokia does file an appeal by **March 24, 2006**,
25 the case shall be stayed pending a decision by the Federal Circuit.

26 **D. Nokia's Motion to Dismiss the Complaint**

27 Nokia has filed an alternative motion to dismiss Qualcomm's complaint for failure
28

1 to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. A
2 motion to dismiss for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6) tests the
3 legal sufficiency of the claims in the complaint. A claim can only be dismissed with
4 prejudice if "it appears beyond doubt that the plaintiff can prove no set of facts in support
5 of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46
6 (1957). The court must accept as true all material allegations in the complaint, as well as
7 reasonable inferences to be drawn from them, and must construe the complaint in the light
8 most favorable to plaintiff. NL Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986);
9 Parks Sch. of Bus., Inc. v. Symington, 51 F.3d 1480, 1484 (9th Cir. 1995).

10 Furthermore, a court should not grant a Rule 12(b)(6) motion without leave to
11 amend unless "it appears beyond doubt that the plaintiff can prove no set of facts in support
12 of his claim which would entitle him to relief." Parks Sch. of Bus., Inc., 51 F.3d at 1484;
13 see also Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Gilligan v. Jamco Development
14 Corp., 108 F.3d 246, 248 (9th Cir. 1997). Nokia argues that because Plaintiffs (1) have not
15 identified a single product or service offered by Defendants that allegedly infringes the
16 patents in suit, (2) have not alleged the knowledge or intent elements of contributory or
17 inducing infringement, and (3) have not specified which causes of action are asserted
18 against which Defendants, the complaint should be dismissed for failure to state a cause of
19 action under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

20 Claims for patent infringement are subject to the liberal notice pleading standard of
21 Rule 8 of the Federal Rules of Civil Procedure, which requires, *inter alia*, "a short and
22 plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8
23 (2005). Here, the complaint alleges one cause of action for patent infringement (*i.e.* literal
24 infringement, infringement under doctrine of equivalents, and indirect infringement), gives
25 the statutory basis for the alleged types infringement, describes the twelve patents that are
26 allegedly infringed, and adequately names the Defendants. The Court finds that the
27 complaint states a cause of action and accordingly **DENIES** Defendants' Rule 12(b)(6)

1 Motion to Dismiss.

2 **C. Nokia's Motion for a More Definite Statement**

3 Nokia argues that because the complaint is too vague to give them notice of what
4 products or services are accused, the Court should order Plaintiffs to make a more definite
5 statement identifying (1) the accused devices, (2) which causes of actions relates to each
6 Defendant, (3) which theories of infringement relate to each Defendant, (4) which
7 allegations relate to each Defendant, (5) which patent(s) and patent claims relate to each
8 Defendant, and (6) which part of which version of the GSM standard do plaintiffs allege
9 are covered by the claims in suit. Nokia P/A, 16-17 (Doc. No. 12).

10 The test in evaluating a motion under Rule 12(e) is whether the complaint provides
11 the defendant with a sufficient basis to frame a responsive pleading. Federal Sav. and Loan
12 Ins. Corp. v. Musacchio, 695 F.Supp. 1053, 1060 (N.D. Cal. 1988) (internal citations
13 omitted). Generally, the court will require a more definite statement only when the
14 pleading is "so vague or ambiguous that the opposing party cannot respond, even with a
15 simple denial, in good faith or without prejudice to himself." Delta Educ., Inc. v. Langlois,
16 719 F.Supp. 42, 50 (D.N.H. 1989); Bureerong v. Uvawas, 922 F.Supp. 1450, 1461 (C.D.
17 Cal. 1996) ("[A] motion for a more definite statement should not be granted unless the
18 defendant literally cannot frame a responsive pleading."). Motions for a more definite
19 statement are generally viewed with disfavor and are rarely granted. Cellars v. Pacific
20 Coast Packaging, Inc., 189 F.R.D. 575, 577-8 (N.D. Cal. 1999).

21 Paragraph 23 of the Complaint alleges that Nokia manufactures GSM and 3GPP
22 products but does not state that this manufacture is an infringing act. Therefore, the Court
23 **GRANTS** Nokia's Rule 12(e) Motion for a More Definite Statement because there is no
24 nexus between the manufacture of the listed products and infringement. Contrary to
25 Nokia's arguments, Qualcomm does not have to identify all of the products that contain
26 GSM or 3GPP standards or tell which products apply to which Defendants because this
27 information can be obtained by Nokia during the discovery process. Accordingly, the

1 Court **GRANTS** Qualcomm ten (10) days leave to amend the complaint to allege that the
2 manufacture of Nokia's alleged products constitutes infringement of the patents in suit.

3 **IV. CONCLUSION**

4 For the reasons discussed above, the Court

5 (1) **DENIES** Defendants' Motion to Dismiss,

6 (2) **GRANTS** Defendants' Motion for a More Definite Statement and **GRANTS**
7 Plaintiffs ten days leave to amend the complaint,

8 (3) **DENIES** Defendants' Motion to Stay pending arbitration, and

9 (4) **GRANTS** Defendants' Motion to Stay Pending Appeal.

10
11 **IT IS SO ORDERED.**

12
13 DATED: 03-14-06



14 HON. RUDI M. BREWSTER
15 United States Senior District Judge

16 cc: Hon. Barbara L. Major
17 United States Magistrate Judge

18 All parties
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